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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944 45

No. 979 40

DEFENSE PLANT CORPORATION, APPELLANT

vs.

COUNTY OF BEAVER, PENNSYLVANIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

FILED FEBRUARY 24, 1945

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OCTOBER TERM, 1944

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1 In the Court of Common Pleas of Beaver County, Pennsylvania

No. 320, June Term 1943

IN RE APPEAL OF DEFENSE PLANT CORPORATION FROM ASSESSMENT OF PROPERTY IN THE TOWNSHIP OF BOROUGH, COUNTY OF BEAVER, PENNSYLVANIA

Docket entries

APPEAL FROM PROPERTY ASSESSMENT

April 30th, 1943, petition of Defense Plant Corporation from assessment of property in the Township of Borough, County of Beaver, Pennsylvania, presented and Order of Court made, to wit: And now to wit: April 30th, 1943, upon consideration of the within petition and upon motion of Reed and Ewing, attorneys for the appellant, a hearing on said appeal is fixed for the 25th day of May 1943 at 9:00 o'clock A. M. Notice of said hearing shall be given to the County Commissioners acting as a Board of Revision.

By the Court,

FRANK E. READER, *P. J.*

April 30th, 1943, service of copy received and notice accepted for Board of Revision by John G. Marshall, County Solicitor of Beaver County, Pennsylvania.

May 25, 1943, at nine o'clock A. M. Eastern War Time,
2 this being the time fixed for a hearing in the above Appeal on motion of Harold F. Reed of Reed and Ewing of counsel for appellant, concurred in by J. G. Marshall, Solicitor for Beaver County, said hearing is continued until Thursday, June 24, 1943, at nine o'clock A. M. Eastern War Time.

By the Court,

FRANK E. READER, *P. J.*

June 24, 1943, stipulation of counsel filed.

June 25, 1943, Argued C. A. V.

June 29, 1943, Testimony filed.

July 8th, 1943, certificate filed to wit: In accordance with the provisions of the Act of March 5th, 1943, and Supreme Court Rule 52, it is hereby certified that the Appellant's interest in the amount really in controversy in the above entitled case exceeds the sum of $2,500.00 exclusive of costs.

By the Court,

FRANK E. READER, *P. J.*

August 5th, 1943, it being made known to the Court that in the testimony of J. E. White on page 92 of the Record, the following statement appears in answer to a question:

"This identification is accepted by means of Serial Inventory numbers marked in private places on the equipment as well as affixing a tag which clearly identifies that piece of property as the property of the Defense Plant Corporation."

3 And it being the recollection of counsel for Defense Plant Corporation that the said J. E. White used the word "prominent" and not "private"; and that Mr. J. E. White has written a letter stating that his recollection is that he did use the word "prominent" and not "private," on motion of Harold F. Reed, Esq., of counsel for Defense Plant Corporation, the record is amended by changing the word "private" in the answer of J. E. White at page 92 above recited to "prominent."

By the Court,

FRANK E. READER, *P. J.*

I, John G. Marshall, Esq., do not recall whether the witness, J. E. White, used the word "private" or the word "prominent" in response to a question which answer appears on page 92 of the testimony and being the third answer on that page, and I do not think it matters which of the two words was used by the witness.

(Signed) JOHN G. MARSHALL,
Attorney for the County of Beaver.

June 8th, 1944, opinion filed and Order of Court made to wit: Now to wit; June 7th, 1944, it is hereby ordered, adjudged, and decreed that the appeal of Defense Plant Corporation from the assessment set forth in the findings of fact hereinbefore stated be and the same hereby is dismissed; and that the assessment of said land as made by the assessor and confirmed by the County

4 Commissioners of Beaver County acting as a Board of Tax Revision and for said County be and the same hereby is approved; the costs of this proceeding to be paid by Defense Plant Corporation.

By the Court,

FRANK E. READER, *P. J.*

Same day an exception is granted and bill sealed to Defense Plant Corporation.

FRANK E. READER, *P. J.* [SEAL]

June 12th, 1944, certificate filed to wit: Now June 12th, 1944, I hereby certify that the amount involved in the above entitled matter is in excess of $2,500.00.

FRANK E. READER, *P. J.*

June 26th, 1944. Order of Court filed to wit: And now June 26th, 1944, it having been brought to the attention of the Court that a question has arisen if the order of June 7th heretofore entered was a final order in view of the fact that it was signed Frank E. Reader, P. J., and it having been the intention of the Court that the order of June 7th be the final order, on motion of Reed and Ewing, attorneys for Defense Plant Corporation the order of Judge Reader of June 7th as follows:

"Now to wit: June 7th, 1944, it is hereby ordered, adjudged, and decreed that the appeal of Defense Plant Corporation from the assessment set forth in the findings of fact hereinbefore stated be and the same hereby is dismissed; and that the assessment of said land as made by the assessor and confirmed by the County Commissioners of Beaver County acting as a Board of Tax Revision in and for said County be and the same is hereby approved; the costs of this proceeding to be paid by Defense Plant Corporation.

By the Court,

FRANK E. READER, *P. J.*"

is reaffirmed as the order of the Court en banc.

FRANK E. READER, *P. J.*
HENRY H. WILSON, *Judge.*

Same day, an exception is granted and bill sealed to Defense Plant Corporation.

FRANK E. READER, [SEAL]
HENRY H. WILSON, *Judge.*

June 28th, 1944, Certiorari from the Supreme Court returnable to the last Monday of September, 1944.

June 29th, 1944, notice of appeal to the Supreme Court filed.

June 29th, 1944, service of the foregoing notice is hereby accepted by John G. Marshall, Solicitor for the County of Beaver, Pennsylvania, filed.

In Court of Common Pleas of Beaver County

Appeal from property assessment

Filed April 30, 1943

To the Honorable, the Judges of said Court:

The petition of Defense Plant Corporation respectfully represents:

1. Defense Plant Corporation is an integral part of the Government of the United States of America, duly or-

6 ganized and existing under the laws of the United States pursuant to Section 5d of the Reconstruction Finance Corporation Act (Act of June 19, 1934, c. 653, Section 5, 48 Stat. 1168–97), as amended, Title 15 U. S. C. 606b.

2. The Township of Borough is a first class township in Beaver County, Pennsylvania.

3. The County Commissioners of the County of Beaver, pursuant to the General County Assessment Law, Act of 1933, P. L. 853, Section 501, Purdon's Pa. Stat. Annot. Title 72 (5020-501), as amended, constitute the Board of Revision which hears appeals from assessments from Borough Township and other taxing districts in the County of Beaver.

4. Defense Plant Corporation owns certain lands, buildings, machinery, and equipment for the production of materials for purposes of National Defense and the prosecution of the war, situate in the Township of Borough, County of Beaver, Pennsylvania.

5. The Assessor for Borough Township assessed the property of the Defense Plant Corporation for real property taxes for 1943–45 Triennial period under Section 201 of the General County Assessment Law, Act of May 22, 1933, P. L. 853, as amended, Purdon's Pa. Stat. Annot., Title 72 (5020–201). An itemization of the property of Defense Plant Corporation assessed as aforesaid is as follows

7

9 acres of land @ $1,100	$9,900.00
24 acres of land @ $1,000	24,000.00
Plant Building including Cafeteria	338,000.00
Administration Building	32,000.00
Boiler house	60,000.00
Personnel Building	5,000.00
Machinery	388,000.00

6. Defense Plant Corporation appealed to the County Commissioners of Beaver County from the assessment made by the Borough Township Assessor against the property of Defense Plant Corporation on the grounds (a) that the Pennsylvania Statutes, to the extent that they impose a tax on machinery and equipment owned by Defense Plant Corporation are violative of the Constitution and Statutes of the United States, (b) that its land, buildings, machinery, and equipment are exempt from taxation under the Constitution and Statutes of Pennsylvania as public property used for public purpose.

7. The County Commissioners of Beaver County sitting as the Board of Revision heard Defense Plant Corporation's appeal on March 2, 1943, and, on March 3, 1943, dismissed the appeal as to the claims for exemption holding all of the property to be taxable, and reaffirmed the assessment made by the Borough Township Assessor.

8. The Act of Congress approved June 10, 1941, c. 190, § 3, 55 Stat. 248, U. S. C. A. Title 15 § 610, provides as to Defense Plant Corporation inter alia as follows:

8 "The corporation, including its franchises, its capital, reserves and surplus and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency or possession thereof or by any state, county, municipality or local taxing authority; except that any real property of the corporation shall be subject to state, territorial, county, municipal or local taxation to the same extent, according to its value as other real property is taxed."

9. The machinery and equipment of Defense Plant Corporation is personal property and does not constitute real property.

10. The action of the said Assessor and the said Board of Revision in assessing machinery and equipment owned by Defense Plant Corporation denies the validity of Section 10 of the Reconstruction Finance Corporation Act as amended by the Act of June 10, 1941 aforesaid.

11. The Statutes of the Commonwealth of Pennsylvania relative to the taxation of real estate to the extent that they impose taxes on said machinery and equipment, are invalid on the ground that they are repugnant to the Constitution of the United States, to wit: The immunity of the United States and its instrumentalities from taxation by states or political subdivisions thereof and are repugnant to Section 10 of the Reconstruction Finance Corporation Act, as amended.

9 12. The property of Defense Plant Corporation in Borough Township, Beaver County, Pennsylvania, is being used entirely for National Defense purposes and is all exempt from taxation as public property used for public purposes by virtue of the statutory exemption from taxation contained in the Act of May 22, 1933, P. L. 853, as amended, Purdon's Pa. Stat. Annot., Title 72, Section 5020-204, Subsection (g), enacted pursuant to Article 9, Section 1 of the Constitution of Pennsylvania.

13. The action of the said Assessor and the said Board of Revision in assessing land, buildings, machinery and equipment owned by Defense Plant Corporation denies the validity of exemption from taxation afforded by Article 9, Section 1 of the Constitution of Pennsylvania, and the Act of May 22, 1933, P. L. 853, as amended, Purdon's Pa. Stat. Annot., Title 72, Section 5020-204, Subsection (g).

14. The assessments aforesaid upon said machinery and equipment and upon the real property of Defense Plant Corporation in Borough Township are illegal and invalid for reasons aforestated.

Wherefore, your petitioner appeals from the decision of the County Commissioners of Beaver County, sitting as a Board of

Revision, in accordance with the Act of Assembly, and
10 prays your Honorable Court to strike said assessments from the assessment books.

DEFENSE PLANT CORPORATION,
By PAUL L. HOLDEN,
Attorney-in-Fact.

STERLING NEWELL,
HENRY J. CRAWFORD,
PAUL L. HOLDEN,
WARREN E. HACKER,
SQUIRE, SANDERS & DEMPSEY,
Cleveland, Ohio.

HAROLD F. REED,
REED & EWING,
Beaver, Pennsylvania.
Counsel for Defense Plant Corporation.

[*Duly sworn to by Paul L. Holden; jurat omitted in printing.*]

11 *Order*

And now, to wit: April 30, 1943, upon consideration of the within petition and upon motion of Reed and Ewing, attorneys for the appellant, a hearing on said appeal is fixed for the 25th day of May 1943 at 9:00 o'clock A. M. Notice of said
12 hearing shall be given to the County Commissioners acting as a Board of Revision.

By the Court,

FRANK E. READER, *P. J.*

In Court of Common Pleas of Beaver County

Agreed statement of facts

Filed June 24, 1943

To the Honorable, the Judges of said Court:

Now, June 24, 1943, the parties to the above-entitled Appeal, by their attorneys, agree upon the following statement of facts for the judgment of the Court, which agreement is for the purposes only of the trial of this appeal, to final judgment.

1. Defense Plant Corporation, Appellant herein, is a corporation created by the Reconstruction Finance Corporation, pursuant to Section 5d of the Reconstruction Finance Corporation Act of Congress, as amended.

2. The Township of Borough is a first-class township in Beaver County, Pennsylvania.

3. The County Commissioners of the County of Beaver, pursuant to the General County Assessment Law, Act of 1933, P. L. 853, Section 501, Purdon's Pa. Stat. Annot. Title 72 (5020-501), as amended, constitute the Board of Revision which hears appeals from assessments from Borough Township and other taxing districts in the County of Beaver.

4. John Howard Pew, et ux., et al., by deed dated April
13 15, 1941, and recorded in the Recorder's Office of Beaver County, Pennsylvania, in Deed Book 481, page 201, did grant and convey unto Defense Plant Corporation a corporation created by the Reconstruction Finance Corporation, pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended:

All those certain lots or pieces of land situate in the Township of Borough, County of Beaver and Commonwealth of Pennsylvania, being parts of Academy Lots Nos. 11, 12, and 13; all of Academy Lots Nos. 14 and 15, in the General Plan of Academy Lots, adjoining the Town of Beaver, and part of Outlot No. 1 in the General Plan of Outlots adjoining the Town of Beaver, lying together and together bounded and described as follows:

Beginning at a point in State Highway L. R. 278, commonly known as Route No. 930 at the intersection of the northwesterly side of Georgetown Lane with the center line of Tuscarawas Road, as originally located; thence along the extended northwesterly side of Georgetown Lane, South 54°42' West 1,731.49 feet to the center line of Walnut Lane; thence along the center line of Walnut Lane, North 35°18' West 859.28 feet to the southerly side of Division Lane; thence along the southerly side of Division Lane and lands now or formerly of Mary J. Harton, North 54°49' East 255.46 feet to a point; thence along said lands, now or formerly of Mary J. Harton, North 48°40' West 16.97 feet to a point;
14 thence by other lands of the grantors North 54°49' East 1,283.89 feet to a point in the center of the Tuscarawas Road, as originally located at line of land now or formerly of John S. Sweesy, along the center line of said Tuscarawas Road as originally located South 48°00' East, 900.92 feet to the place of beginning.

5. Defense Plant Corporation erected on said premises certain buildings, and caused the machinery specified in the assessment, hereinafter referred to, to be placed in said buildings.

6. Defense Plant Corporation leased the land, buildings, and machinery to Curtiss-Wright Corporation, a private corporation organized under the laws of the State of Delaware for the manufacture of aircraft propellers as set out in said lease, and from which private profit may be derived by the Curtiss-Wright Corporation. A copy of said lease is attached hereto, marked "Exhibit A," and made a part hereof. Said Lease Agreement has been

amended from time to time but not in any manner affecting the questions presented by this appeal.

7. In this appeal there is no dispute as to the amounts of the valuation of the property assessed for the triennial assessment for the years 1943, 1944, and 1945.

8. Later, James W. Eckler, the Assessor for Borough Township, assessed said property of Defense Plant Corporation for real property taxes for 1942, under Section 201 of the General County Assessment Act of May 22, 1933, P. L. 853, as amended (72 Purdon's Statutes 5020-201, Pocket). An itemization of the property of Defense Plant Corporation, assessed as aforesaid, is as follows:

Nine (9) Acres improved, assessed at $1,100 per acre	$9,900.00
Twenty-four (24) acres, not improved, assessed at $1,000 per acre	24,000.00
Plant building and cafeteria assessed at	338,000.00
Administration Building, assessed at	32,000.00
Boiler House, assessed at	60,000.00
Personnel Building, assessed at	5,000.00
Machinery, assessed at	388,000.00
Total	856,900.00

9. After the tax duplicate had been prepared for the 1942 taxes, and the tax statement mailed to the Defense Plant Corporation, it objected to the inclusion of the machinery, claiming machinery was personal property, and not taxable as real property. On or about the 31st day of July 1942, Curtiss-Wright Corporation paid all 1942 taxes, except upon that part of the property designated as machinery, which has not been paid.

10. At the triennial Assessment made during 1942, the Assessor for Borough Township assessed said property for real property taxes for 1943, 1944, and 1945 triennial period, at the same valuation as previously assessed, and itemized in paragraph 8, above.

11. On March 2, 1943, an appeal was made to the County Commissioners of Beaver County, sitting as a Board of Revision, by Defense Plant Corporation from the assessment made by the Borough Township Assessor, on the grounds stated therein. A copy of said appeal marked "Exhibit B," is attached hereto and made a part hereof.

(Exhibit B is printed on Page 5 as Appeal from Property Assessment.)

12. The County Commissioners of Beaver County, sitting as the Board of Revision, heard Defense Plant Corporation's Appeal on March 2, 1943, and, on March 3, 1943, dismissed the appeal as to the claims for exemption, holding all of the property to be taxable and reaffirmed the assessment made by the Borough Township Assessor.

13. That the machinery of Defense Plant Corporation in its buildings in Borough Township, Beaver County, Pennsylvania, or other machinery, are necessary and essential to its existence and operation as a manufacturing plant for aircraft propellers.

14. The Act of Congress approved June 10, 1941; c. 190 § 3, 55 Stat. 248, U. S. C. A. Title 15 § 610, provides as to Defense Plant Corporation as follows:

"Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as
17 to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, County, municipality, or local taxing authority, except as provided in section 742 (a) of Title 31. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent, according to its value as other real property is taxed. The exemptions provided for in the preceding sentence with respect to taxation, (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) shall be construed to be applicable not only with respect to the Reconstruction Finance Corporation but also with respect to (1) the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company, the Rubber Reserve Company, and any other corporation heretofore or hereafter organized or created by the Reconstruction Finance Corporation under section 606b of this title, as amended, to aid the Government of
18 the United States in its national-defense program, (2) the RFC Mortgage Company, the Federal National Mortgage Association, and any other public corporation heretofore or hereafter organized by or at the instance of the Reconstruction Finance Corporation, and (3) the Disaster Loan Corporation, and any other public corporation which is now or which may be hereafter wholly financed and wholly managed by the Reconstruction Finance Corporation. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by any corporation referred to in clause (1), (2), or (3) of the preceding sentence, but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

15. The General County Assessment Law of May 22, 1933, P. L. 853 § 201, provides in part as follows:

"The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school, and poor purposes at the annual rate:

"(a) All real estate, to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by law from taxation."

16. Article 9, Section 1, of the Constitution of Pennsylvania, provides in part, as follows:

"All taxes shall be uniform, upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, * * *."

17. In pursuance of the Constitutional authority, above quoted, the Legislature of Pennsylvania in the General County Assessment Law of May 22, 1933, P. L. 853, incorporated Section 204, which provides for the exemption of certain property from taxation. In subsections a, b, c, d, e, and f of said Section 204, are enumerated various classes of public property, used for public purposes, which are exempt from taxation in Pennsylvania. Subsection 204 (g), reads as follows:

"All other public property used for public purposes, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same."

18. At the session of General Assembly held in 1943, subsection 204 (g) as above quoted, was amended by Act No. 81, signed by the Governor May 3, 1943, so that the same at this time reads as follows:

"All other public property used for public purposes, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same, but this shall not be construed to include the property, otherwise taxable, which is owned or held by an agency of the government of the United States."

19. Subsection 204 (L) of the General County Assessment law of May 22, 1933, P. L. 853, reads as follows:

"All property, including buildings and the land reasonably necessary thereto, provided and maintained by public or private charity, and used exclusively for public libraries, museums, or art galleries, and not used for private or corporate profit, so long as the said public use continues. Except as otherwise pro-

ided in clause (k) of this section, all property, real or personal, ther than that which is in actual use and occupation for the urposes specified in this section, and all such property from hich any income or revenue is derived, other than from re-ipients of the bounty of the institution or charity, shall be ubject to taxation, except where exempted by law for State urposes, and nothing herein contained shall exempt same there-rom. Except as otherwise provided in clause (j) of this sec-ion, all property, real and personal, in actual use and occupa-tion for the purposes specified in this section shall be subject to taxation, unless the person or persons, asso-ciation, or corporation, so using and occupying the same, hall be seized of the legal or equitable title in the realty and ossessor of the personal property absolutely."

It is not intended that reference to any specific Acts herein hall preclude the application of any other applicable law.

Each party shall have the right to introduce relevant testimony t the hearing of this case or to object to the relevancy of any fact ereinbefore stipulated.

HAROLD F. REED,
HENRY J. CRAWFORD,
Attorneys for Defense Plant Corporation.
JOHN G. MARSHALL,
Attorney for County Commissioners of the County of Beaver, Pennsylvania.

Exhibit A to agreed statement of facts

Agreement of Lease

Curtiss-Wright Corporation (Curtiss Propeller Division—ittsburgh, Pa.)

This Agreement made and entered into this 5th day of March 941, by and between Defense Plant Corporation (hereinafter eferred to as "Defense Corporation"), a corporation created by Reconstruction Finance Corporation pursuant to Sec-tion 5d of the Reconstruction Finance Corporation Act, as amended, to aid the Government of the United States hereinafter sometimes called the "Government") in its National Defense Program, and Curtiss-Wright Corporation (hereinafter alled "Lessee"), a corporation organized and doing business nder the laws of the State of Delaware; Witnesseth:

Whereas, the production of aircraft propellers for the Gov-rnment and the expansion of capacity within the United States or such production are important in the interest of the National Defense Program; and

Whereas, the War Department has advised that the establishment of an additional plant for the manufacture and furnishing of such aircraft propellers at or near Beaver, Beaver County, Pennsylvania, having a productive area of approximately three hundred sixty thousand (360,000) square feet and that the acquisition of additional machinery and equipment for use in said plant and in Lessee's existing plant (such machinery and equipment, exclusive of dies, jigs, gauges, patterns, and similar items being hereinafter sometimes called the "Machinery"), is in its opinion necessary in the interest of national defense; and

Whereas, Lessee has acquired or proposes to acquire a site at or near Beaver, Pennsylvania, consisting of approximately thirty-three (33) acres of land suitable for the location of such additional plant; and

23 Whereas, Lessee has entered into a contract or contracts with the Government for the manufacture and furnishing of aircraft propellers; and the establishment of the additional plant above referred to and the acquisition of the Machinery to be provided hereunder are essential to enable Lessee to manufacture and furnish and to expedite the delivery of such products in accordance with said contract or contracts; and

Whereas, Lessee represents that, in the price charged the Government for the manufacture and furnishing of such products there have been eliminated all charges (including amortization and depreciation), exclusive of the maintenance, taxes and insurance provided for herein, for the additional facilities to be provided for hereunder;

Now, Therefore, in consideration of the mutual covenants herein contained it is agreed by and between the parties hereto as follows:

One. Lessee agrees forthwith upon the execution of this agreement to convey or cause to be conveyed to Defense Corporation the plant site in fee simple, and Defense Corporation agrees to purchase such site. The title to the site and the price thereof shall be satisfactory to Defense Corporation.

Two. Lessee agrees forthwith and from time to time to prepare, or cause to be prepared, and to submit to Defense Corporation and to the War Department for their approval such plans, designs, specifications, and schedules for the construction

24 and equipment of the plant and the acquisition and installation of the Machinery (which shall indicate the estimated cost thereof, stating as to the Machinery the estimated price of each item), as they may require; and Lessee agrees, upon approval of such plans, designs, specifications, and schedules by Defense Corporation and the War Department, to proceed in accordance therewith and complete as soon as practicable the construction

and equipment of the plant (hereinafter called the "Construction Program") and the acquisition and installation of the Machinery (hereinafter called the "Acquisition Program"). With the approval of Defense Corporation, Lessee shall have the right to make any alteration in the plans, designs, specifications, and schedules approved pursuant to this paragraph Two; provided, that if such alteration will result in substantial delay in effecting, or a material alteration in the character of, the Programs or will increase the aggregate cost of said Programs beyond the aggregate amount of such estimates, Lessee shall likewise obtain from the War Department its approval of such alteration. Lessee agrees to furnish, without cost to Defense Corporation, all necessary dies, jigs, gauges, patterns, and similar items.

Three. In carrying out the work to be performed by it under the Construction Program Lessee may employ such contractors and enter into such contracts with them as it may deem advisable, with the written approval of a designated representative of Defense Corporation.

25 Four. Defense Corporation shall advance the funds necessary for carrying out the Construction Program, from time to time as the work progresses, upon requisition of Lessee approved by Defense Corporation. A representative of Defense Corporation authorized to approve such requisitions on its behalf shall be stationed at the site of construction during such times as Lessee may require.

Five. Lessee shall from time to time advise Defense Corporation, in writing, of the items of Machinery which Lessee shall propose to purchase for the purpose of the Acquisition Program and the estimated cost thereof, and shall forthwith proceed to purchase the same in the name and on behalf of Defense Corporation; provided, however, that no such items shall be purchased or installed if Defense Corporation shall object thereto within three (3) days of the receipt of such written advice. Defense Corporation shall, from time to time, furnish to Lessee such evidence as Lessee may request with reference to its authority to make such purchases on behalf of Defense Corporation.

Six. Lessee shall furnish to Defense Corporation and to the War Department a description of each item of Machinery so purchased so that it shall be capable of identification, and, to the extent practicable, each item shall be marked or stamped by Lessee in a way satisfactory to Defense Corporation so as to indicate Defense Corporation's ownership therein.

26 Seven. All bills of the vendors for Machinery purchased by Lessee for the account of Defense Corporation pursuant to the provisions hereof shall be promptly submitted by Lessee to Defense Corporation accompanied by a certificate of Lessee, exe-

cuted by one of its officers duly designated for that purpose, to the effect that the items covered by such bills are included in and necessary in connection with the Acquisition Program, that the prices thereof are in its opinion fair and reasonable, and that such bills are proper for payment. Such bills, and other costs of the Acquisition Program when approved by Defense Corporation, shall be promptly paid by Defense Corporation.

Eight. In the execution of the Programs Lessee agrees to comply with, and give all stipulations and representations required by, applicable federal laws and further agrees to require such compliances, representations, and stipulations with respect to any contract entered into by it with others under such Programs as may be required by applicable federal law.

Nine. No salaries of Lessee's executive officers, no fees of its attorneys, no part of the expense incurred in conducting Lessee's offices and no overhead expenses of any kind shall be included in the cost of the site or of the Programs, except that direct expenses of Lessee's officers or employees and fees of attorneys retained or employed by Lessee in connection with the Programs may be so included to the extent approved by Defense Corporation.

27 Ten. Notwithstanding any other provisions herein contained, the amount which Defense Corporation shall be required to expend hereunder shall not exceed Five Million Two Hundred Twenty-one Thousand One Hundred Dollars ($5,221,100).

Eleven. Title to the site, buildings, and Machinery to be acquired hereunder shall, unless and until the same shall be transferred by Defense Corporation in accordance with the provisions hereof, be vested in Defense Corporation, and such Machinery shall remain personality notwithstanding the fact it may be affixed or attached to realty.

Twelve. Subject to termination upon the terms hereinafter in this paragraph Twelve provided, Defense Corporation hereby agrees to lease, and does hereby lease, the site, buildings, and Machinery to be acquired hereunder, to Lessee and Lessee does hereby lease the same from Defense Corporation for a term ending January 1, 1946, which term, upon its expiration, shall be automatically extended, subject to similar termination for an additional period ending January 1, 1948. Defense Corporation and Lessee each agree, upon the written request of the other, to execute and deliver such additional instruments of lease as may be necessary to carry out the provisions of this agreement.

This lease or any extension thereof under this paragraph Twelve may be terminated by the parties hereto in the manner hereinafter set forth. At any time when substantial use by Lessee of

the site, buildings, and Machinery shall be no longer
28 required to enable Lessee to furnish the Government with products required by it, Defense Corporation may, with the written approval of the War Department, give written notice to Lessee that such substantial use is no longer required and that Defense Corporation therefore proposes the termination of the lease or extension thereof, and Lessee may give similar written notice to Defense Corporation and to the War Department stating that Lessee therefore proposes the termination of this lease or extension thereof. The lease, or extension thereof, shall terminate five (5) days after receipt by Lessee of the notice from Defense Corporation above provided or after receipt by Defense Corporation and the War Department of the notice from Lessee above provided, unless within that time Lessee or the War Department, as the case may be, shall require by notice in writing or by telegraph to the other and to Defense Corporation, that the facts necessary to termination, as hereinabove provided, be submitted for determination by arbitrators, in which event the arbitrator to be appointed by the party giving the notice of arbitration shall be named in the notice, the arbitrator to be appointed by the other party to the arbitration (Lessee or the War Department, as the case may be) shall be named within five (5) days of receipt of such notice of arbitration, and an additional arbitrator shall, within five (5) days of the appointment of the second arbitrator, be selected by the two (2) arbitrators theretofore appointed, but
if one of said parties shall have failed to appoint an arbi-
29 trator, the sole arbitrator shall arbitrate the question alone. If two (2) arbitrators shall have been appointed by the respective parties to the arbitration and shall have failed to select an additional arbitrator within the above-stated time, the additional arbitrator shall be appointed by the Senior Judge of the Circuit Court of Appeals for the Third Circuit, upon application therefor by either of said parties to the arbitration. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint its arbitrator, the decision of the sole arbitrator, shall be final and binding upon the Lessee, the War Department and Defense Corporation for all purposes. The cost of arbitration, except the cost of the arbitrator appointed by the War Department, shall be paid by Lessee. The arbitrators, or the sole arbitrator, as the case may be, shall give prompt notice in writing of the decision to the War Department, to Lessee and to Defense Corporation, and if the decision establishes that the facts necessary to termination exist, this lease, or extension thereof, shall terminate on the fifth day after the giving of notice of the decision.

Thirteen. In consideration of the covenants herein contained and as rental for such site, buildings, and Machinery, Lessee

agrees to pay to Defense Corporation for the period of this lease, or extension thereof, the sum of One Dollar ($1) per year payable on or before the first day of January of each year.

Fourteen. Defense Corporation, by notice in writing with the approval of the War Department noted thereon, may, in addition to all other rights with reference to termination under paragraph Twelve hereof, cancel this lease, or extension thereof, in the event (a) all or substantially all of Lessee's contracts with the Government, at any time outstanding, for the manufacture or furnishing of aircraft propellers or other products shall be terminated or canceled prior to completion, or (b) the Government shall request priority with respect to the manufacture or furnishing of any products with the facilities to be provided hereunder, and Lessee shall fail or refuse to give such priority, or (c) Lessee is adjudged insolvent or bankrupt, a receiver is appointed for Lessee or its property, Lessee makes an assignment for the benefit of creditors, or a petition is signed by Lessee pursuant to any of the provisions of the United States Bankruptcy Act, as amended, or a petition under any of the provisions of the United States Bankruptcy Act, as amended, is filed against Lessee and such petition is not dismissed within sixty (60) days, or (d) of any violation of any of the terms, conditions or covenants of this lease or extension thereof by Lessee and the failure of Lessee to cure such violation within thirty (30) days from the giving of written notice thereof by Defense Corporation to Lessee. Upon the expiration, termination, or cancellation of this lease or extension thereof, Defense Corporation shall have the right to invoke any remedy permitted by law or in equity for the protection of its interests hereunder and Lessee hereby expressly waives all rights which it may have to redeem or to be served with any further notice of Defense Corporation's intention to cancel or terminate this lease or extension thereof other than as herein provided.

Fifteen. Upon the expiration or termination of this lease or extension thereof pursuant to paragraph Twelve hereof, or upon cancellation of this lease or extension thereof pursuant to clause (a) of paragraph Fourteen (unless such cancellation shall have been effected because of a violation by Lessee of the contracts referred to in said clause (a)) Lessee shall have and is hereby granted, for a period of ninety (90) days after such termination, expiration, or cancellation (hereinafter referred to as the "Option Period") the right and option by written notice to Defense Corporation and to the War Department, to purchase all but not part of the site, buildings, and Machinery at the following prices:

(a) If exercised within eight (8) months from the date of

execution hereof, at the actual cost to Defense Corporation of the site, buildings, and Machinery (including all direct expenses without overhead incurred by Defense Corporation in connection therewith or in connection with this agreement); or

(b) If exercised after eight (8) months from the date of execution hereof, at the actual cost to Defense Corporation of the
32 site, buildings, and Machinery (including all direct expenses without overhead incurred by Defense Corporation in connection therewith or in connection with this agreement), less an amount representing depreciation, obsolescence, and loss of value due to use for national defense purposes for each year or fractional part thereof at the following rates for the following classifications of equipment, which classifications shall be determined in connection with the various items as the construction and acquisition of the items comprising the Programs proceed:

1. Buildings, Improvements (fencing, paving, spur tracks, etc.) and Building Installations other than mechanical, 5%.

2. Installations (mechanical), Equipment, Machinery, Shop Fixtures, Laboratory and Test Equipment; Furniture and Fixtures, Trucks, etc., 12%.

3. Portable Durable Tools and Automotive Equipment, 50%.

Provided, however, that the minimum residual value on all items shall be 15%.

During the Option Period Lessee shall have the right to negotiate with Defense Corporation and the War Department for the purchase or lease of the site, buildings, and Machinery, or any portion thereof, and, upon the establishment by the Lessee, Defense Corporation, and the War Department of mutually
33 satisfactory terms and conditions, Defense Corporation will sell or lease, as the case may be, the property covered thereby to Lessee. Defense Corporation further agrees, to the extent that it lawfully may, that it will not sell the site, buildings, and Machinery or any part thereof to any party or parties other than another branch of the Government (in which event such sale shall be in all respects subject to paragraph Twenty-six hereof) for a period of ninety (90) days following the expiration of the full Option Period unless it shall first have offered the same for sale to Lessee at a price equal to the best offer received by Defense Corporation and Lessee shall have failed or refused to purchase the same within thirty (30) days after the receipt of such offer. In the event of any sale to Lessee pursuant to the provisions of this paragraph, transfer of title shall be made without any representations or warranties whatsoever on the part of Defense Corporation.

Sixteen. So long as the lease remains in full force and effect Lessee shall procure and maintain at its cost insurance on the

buildings and on the Machinery to be acquired hereunder against fire, windstorm, and such other hazards, in such companies, and in such amounts as shall be satisfactory to, or required by Defense Corporation. The policies evidencing such insurance shall be made payable to, and delivered to, Defense Corporation. In the event of loss under any of the policies, the proceeds may, upon the written request of Lessee promptly made, be used by Lessee for the repair, restoration, or
34 replacement of the property damaged or destroyed, and to that end Defense Corporation shall promptly make available to Lessee the insurance proceeds received by Defense Corporation. Any property acquired in replacement shall be the property of Defense Corporation and so identified and shall be subject to all the terms and provisions of this agreement.

Seventeen. Lessee agrees to save Defense Corporation harmless against any liability whatsoever because of accidents or injury to persons or property occurring in the operation of the plant or the use of the Machinery by Lessee. Lessee also agrees that during the term of this lease or any extension thereof, it will procure and maintain at its cost public liability insurance and property damage insurance in such amounts and with such companies as Defense Corporation shall approve or require. The policies evidencing such insurance shall name Defense Corporation as an assured and shall be delivered to Defense Corporation.

Eighteen. Lessee shall use reasonable care in the use and operation of the site, buildings, and the Machinery to be provided hereunder and shall keep the same in good state of repair (ordinary wear and tear excepted), and upon the expiration, termination, or cancellation of this lease or extension thereof, and upon expiration of the Option period, if any, Lessee shall forthwith yield, and place Defense Corporation in peaceful possession of the site and buildings and of all the Machinery to be
35 provided hereunder free and clear of any liens and claims other than those resulting from claims against Defense Corporation; and if any of the Machinery shall be then located elsewhere than in the additional plant to be provided hereunder, Defense Corporation shall, in addition, have the right to remove, and upon the written request of Lessee, shall promptly remove, at its own expense, such Machinery, and if such removal shall not take place within sixty (60) days after such request, Lessee may remove the Machinery and place it in storage for the account and at the expense of Defense Corporation, and Defense Corporation shall have corresponding rights and Lessee shall have corresponding rights and obligations with respect to removal and storage of such machinery not owned by Defense

Corporation as may then be located in the additional plant to be provided hereunder.

Nineteen. Lessee may use such items of Machinery as it may designate in writing to Defense Corporation, in connection with the manufacture and furnishing of aircraft propellers and other products for the Government in any other plants of Lessee. Lessee may also, with the written approval of Defense Corporation and the War Department, lease or lend to any suppliers any item of Machinery, the lease or loan of which it may deem necessary for the performance by Lessee of its contracts with the Government. Any such lease or loan shall be upon such terms and conditions as Defense Corporation and the War De-
36 partment may approve, and Lessee shall in no event by any such lease or loan be relieved of its obligations under the provisions of this agreement.

Twenty. Lessee agrees to pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which at any time during the term of this lease or any extension thereof may be taxed, assessed, or imposed upon Defense Corporation or Lessee with respect to or upon the site, the buildings, or the Machinery, or any part thereof, or upon the occupier thereof or upon the use of the site, buildings or Machinery. Lessee also agrees to pay all claims or charges for or on account of water, light, heat, power, and any other service or utility furnished to or with respect to the site, the buildings, or the Machinery, or any part thereof.

Twenty-one. In carrying out the Programs and in the operation of the plant and any of the Machinery to be acquired hereunder Lessee agrees to comply with all applicable State, municipal, and local laws and the rules, orders, regulations, and requirements of any departments and bureaus and all local ordinances and regulations and further agrees to indemnify and hold Defense Corporation harmless from any liability or penalty which may be imposed by local or State authority or any department or bureau thereof by reason of any asserted violation by Lessee or such laws, rules, orders, ordinances, or regulations.

37 Twenty-two. Lessee agrees that it will not, without the prior written consent of Defense Corporation and the War Department, use such site, buildings, and Machinery for any purpose except for the manufacture and furnishing of aircraft propellers and other products for the Government unless Lessee shall make available for such manufacture and furnishing other facilities of substantially equivalent productive capacity. Lessee also agrees that as long as this lease or extension thereof remains in effect it will eliminate all charges (including all charges for amortization and depreciation) exclusive of the maintenance,

taxes and insurance provided for herein, for the site, buildings, and the Machinery to be provided hereunder, or, as the case may be, for any such substantially equivalent productive capacity, from any price charged the Government or any supplier for the Government.

Twenty-three. So long as this lease or any extension thereof remains in effect, Lessee shall make available to Defense Corporation and the War Department for audit and inspection, its records pertaining to the acquisition of the site and the Programs and the operations of the plant and any of the Machinery. Defense Corporation and the War Department shall have the right to inspect the site, buildings and Machinery to be provided hereunder at all reasonable times during the continuance of this lease or extension thereof.

38 Twenty-four. Lessee will not without prior written consent of Defense Corporation and the approval of the War Department, sell, assign or pledge this lease or any of its rights or obligations hereunder or sublease or permit the use by others of any of the property covered by this lease, except to the extent permitted by paragraph Nineteen hereof.

Twenty-five. The failure of Defense Corporation to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this agreement shall not be construed as a waiver or a relinquishment of the future performance of any such term, covenant, or condition, but Lessee's obligation with respect to such future performance shall continue in full force and effect.

Twenty-six. It is contemplated that the site, buildings, and Machinery to be provided hereunder by this agreement may be transferred and conveyed to another branch of the Government, and, upon such transfer, the Government, acting through the War Department, shall succeed to all the rights, powers, privileges, discretion and obligations of Defense Corporation hereunder, retaining, however, all discretion and power of approval herein vested in the War Department. In the event of such transfer, Defense Corporation shall cease to have any rights, duties or obligations hereunder and all powers in Defense Corporation to give any notices, consents or approvals or to raise any objections and the right of Defense Corporation to receive any notices provided for herein shall terminate and thereafter shall be vested in the War Department.

39 Twenty-seven. No member of or Delegate to the Congress of the United States of America shall be admitted to any share or part of this agreement or to any benefit arising therefrom.

Twenty-eight. Whenever used herein, the term "War Department" shall mean the Secretary of War or any assistant head of the War Department or the Chief of the Material Division, Air Corps, or any person authorized by or acting on behalf of any of the foregoing.

Executed as of the day hereinabove first written.

DEFENSE PLANT CORPORATION [SEAL]
By JOHN W. SNYDER,
Vice President.

Attest:
A. T. HOBSON, *Secretary.*

CURTISS-WRIGHT CORPORATION [SEAL]
By ROBERT L. EARLE,
Vice President.

Attest:
P. H. SCHNECK, *Assistant Secretary.*

CITY OF WASHINGTON,
District of Columbia, ss:

On this 7th day of March A. D. 1941, before me, a Notary Public in and for the District of Columbia, appeared John W. Snyder and A. T. Hobson, to me personally known, who being by me sworn, did each for himself say that they are respectively the Vice President and the Secretary of Defense Plant Corporation, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said John W. Snyder and A. T. Hobson acknowledged said instrument to be the free act and deed of said corporation.

RONALD M. ALLEN,
Notary Public, District of Columbia.

My commission expires Sept. 30, 1943.

STATE OF NEW JERSEY,
County of Orange, ss:

On this 5th day of March A. D. 1941, before me a Notary Public in and for the County of Orange, appeared Robert L. Earle and P. H. Schneck, to me personally known, who being by me sworn, did each for himself say that they are respectively the Vice President and the Assistant Secretary of Curtiss-Wright Corporation, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument

was signed and sealed in behalf of said corporation by authority of its board of directors, and said Robert L. Earle and P. H. Schneck acknowledged said instrument to be the free act and deed of said corporation.

[SEAL] FREDERICK A. WOLTZ,
Notary Public—New Jersey.

My comm. expires Aug. 26, 1943.

41 In Court of Common Pleas of Beaver County

Statement of evidence

Record of testimony taken and proceedings had upon the hearing of the above-entitled cause

Before Honorable FRANK E. READER, P. J.

At the Court House, Beaver, Pennsylvania

Beginning on Wednesday, June 24th, A. D. 1943, at one-thirty o'clock P. M.

Appearances

Messrs. Reed & Ewing, by Harold F. Reed, Esq., and Messrs. Squire, Sanders & Dempsey, by Henry J. Crawford, Esq., of Counsel, appearing on behalf of Appellant; John G. Marshall, Esq., County Solicitor, appearing on behalf of Appellee.

PROCEEDINGS

MR. REED. If the Court please, I move the admission of Henry J. Crawford, Esq., who is a member of the Court of Last Resort of the State of Ohio, for the purpose of this case.

THE COURT. Very well.

42 MR. MARSHALL. Don't take this; this is off the record.

(Discussion here ensued which was not reported.)

Offers of counsel

MR. MARSHALL. We offer in evidence the Agreed Statement of Facts, signed by counsel for the parties, and it is stipulated that it be made a part of the record. Unless the Court desires me to read it, I will not read it at this time, and it may be copied into the record by the stenographer.

THE COURT. It may be copied into the record by the stenographer; you need not read it now.

[Agreed Statement of Facts is printed at page 12a and Agreement of Lease dated March 5th, 1941, is printed at page 21a of Record.]

* * * * *

Mr. MARSHALL. We offer in evidence the deed from John Howard Pew and Helen P. Pew, his wife, Joseph Newton Pew—maybe, I can simplify this by offering the record.

Mr. REED. That is all in the agreed statement of facts, in Section 4.

The COURT. Yes; in paragraph four that deed is recited, and the property, apparently, is described. Of course, we don't know how complete that is, but, we think that will cover it.

43 Mr. MARSHALL. Do you think that will be sufficient?

The COURT. Yes.

Mr. MARSHALL. If the Court please, we want to offer in evidence the assessment, from the official County assessment records, showing the assessment in Borough Township, Beaver County, Pennsylvania, of the Defense Plant Corporation—

Mr. REED. That is all in the agreed statement of facts, in paragraph eight, nine, and ten, in detail.

Mr. MARSHALL. We have agreed to that.

Mr. REED. We have agreed to the official record as it is set out in paragraph eight.

The COURT. If you wish to offer it formally, you may do so, with the understanding that it will be copied into the record just the once.

Mr. MARSHAL. We will offer the assessment as it appears in the official records of the office of the County Commissioners, as set forth in the agreed statement of facts.

Mr. Frauenheim, be sworn.

44 H. T. FRAUENHEIM, called as a witness on behalf of Appellee, having been first duly sworn, testified as follows:

Direct examination by Mr. MARSHALL:

Q. What is your full name?

A. H. T. Frauenheim.

Mr. MARSHALL. In the agreed statement of facts it is agreed that we each have the right to offer any additional testimony on any matter which we think important, and the matter which Mr. Frauenheim is to testify to is not contained in the agreed statement of facts. There may be a question as to its relevancy, but it may be advisable to give the Court the information.

By Mr. MARSHALL:

Q. Where do you live?

A. 7322 Trevanion Avenue, Swissvale, Pa.

Q. What is your business, at present?

A. I am Special Machinery Appraiser for Allegheny County.

Q. How long have you been so engaged?

A. Seven years.

Q. What was your business prior to that time?

A. I was in the manufacturing business, in the manufacture of enamel iron wire, locomotive stay bolts, forgings, and machine tools.

45 Q. While you were engaged in the manufacturing business did you have anything to do with the installation of machinery in mills and industries?

A. Yes; we manufactured a jarring molding machine, which we placed in foundries from one end of the country to the other, and which required special foundations, and, I would add, also, the general installation of machine tools, in our own shops, machine shops, forging shop, and enamel plant.

Q. During the past seven years, have you had opportunity to observe the manner in which machinery is or has been installed in various plants?

A. Yes, sir.

Q. Have you had an opportunity to observe the machinery in the Defense Plant Corporation, in Borough Township, Beaver County?

A. Yes, sir.

Q. Did you observe its manner of installation?

A. Yes, sir.

Q. When did you see this machinery?

A. On June 23rd, 1943.

Q. Did you make a list of the machinery, as you went through this plant?

A. Yes, sir.

Mr. MARSHALL. Mark this as an Exhibit. (List of machinery and equipment marked "Appellee, Beaver County, Exhibit No. 1, for identification.")

By Mr. MARSHALL:

Q. I show you Beaver County Exhibit No. 1, and ask you to state what that is?

46 Mr. REED. Mr. Frauenheim testified that there was a list that he made yesterday; is that it?

A. Yes, sir.

Mr. MARSHALL. Read the question.

(Question read by stenographer.)

A. That is a list of the machine tools located in the Defense Plant Corporation, Curtiss-Wright Corporation Propeller Division, lessees, Borough Township, Beaver County.

Q. Mr. Frauenheim, just describe to the Court how that machinery is installed in this plant?

A. Well, to break it down, if we go into the boiler room, we have two five hundred——

Mr. REED. Just a minute; before we go into that, hadn't we better do something to tie this in with the assessment? I think that we should agree, at this point, that what Mr. Frauenheim has listed is the same general type of machinery was assessed by the Assessor.

Mr. MARSHALL. We understood this would——

Mr. REED. This is a list of machinery, which I understood him to say was made on June 23rd, and there may have been some changes between the time Mr. Eckler assessed it and the present time. I think we can put in testimony later, to show just what has been added, if the Court is interested.

47 Mr. MARSHALL. I don't think that statement is correct, "the same general type"; this machinery is the same, all the way through.

Mr. REED. That is undoubtedly correct.

Mr. MARSHALL. I don't want anything in the record to show that the machinery he saw is not the machinery that was assessed.

Mr. REED. Could we state it this way: That the machinery which Mr. Frauenheim has listed as being in the Curtiss-Wright plant yesterday was, in some instances, the identical machinery that was there at the time of the assessment by Mr. Eckler, but there may have been some additions or changes in the interim, with the exception of the furnaces and the boilerhouse; we will have to introduce testimony to show that that has been put in since. Is that correct, Mr. Frauenheim?

A. I don't know; I didn't inquire when that was put in; I assumed that, if the plant was in operation prior to December 1942, the boilerhouse would be there.

Mr. REED. Don't take this.

(Discussion here ensued, which was not reported.)

48 The COURT. Might we not allow Mr. Frauenheim to testify as to what he found there, which will appear in this exhibit? Then, when you gentlemen have examined that exhibit, if you wish to question any of it having been there at the time of the assessment, or having been embraced in the assessment, you might do that; it might be easier for you to do that, after you have checked his list. We would receive it, subject to any correction.

Mr. MARSHALL. Your Honor, it was just a few weeks ago that this assessment was actually made, and I think we are justified in assuming that the machinery in there now was in there at the time the assessment was made.

Mr. REED. Can we say that the machinery, as included in this list, was the machinery assessed by Mr. Eckler, the Assessor, except, as the witnesses for the Defense Plant Corporation may testify, what may have been added or changed since?

Mr. MARSHALL. That is all right. Read the question and answer.

(Question and answer read by stenographer.)

A. Two five hundred horsepower boilers, installed by the Combustion Engineering Company; these boilers were resting on concrete and brick foundations and the boilers are en-
49 closed by brick walls. In the same building, we have four air compressors, driven by individual motors, ranging from one hundred and seventy-five horsepower to one hundred horsepower, and these air compressors are resting on individual concrete foundations, and bolted thereto.

By Mr. MARSHALL:

Q. How are they bolted down; just describe that?

A. There are lag bolts that are put through the foundation, with a square head on the one end, and the other end is threaded, so as to apply a bolt—or a nut, correct that; to apply a nut to the threaded end, and, then, that is turned to a tight position, and four such bolts make a firm contact with the base of the machine, to the foundation.

Q. I understand, then, there are four bolts, which are imbedded in the case; cement base?

A. That is right.

Q. So placed that, when they set the machinery there, those bolts will protrude through the base of the machine?

A. That is right.

Q. Then, the nuts are put on top of them and screwed down tightly?

A. That is right.

Q. Must those bolts be placed at particular spaces, in the foundation, in order to fit the hole in the base of the machine?

A. That is right; yes, sir.

Q. Suppose you removed one of these machines, that had
50 been so placed, and replaced it with another, different sized machine, what would have to be done, if anything?

A. If it was a similar type of machine, they could take the machine off that foundation and replace it with another one. If it is a different sized machine, they would have to reproduce the entire

foundation, including the bolts; the same arrangement that was there previously, with the old machine.

Q. What other construction do you want to speak of?

A. We have two five-inch upsetters, forging machines, of very heavy weight; I don't know the exact weight; and, those machines are placed upon a specially built foundation, in a similar manner as described with the air compressors, with the bolts, fastened down to the foundation. Then, there was two induction type furnaces that were, also, resting on individual foundations, and made a part of the foundations.

Q. How do you mean, "made a part of"; describe that?

A. Well; those furnaces—the foundations are built there and the induction type furnaces are resting upon the concrete foundation; I wasn't able to see down exactly whether or not the cement part of the foundation was built around the machine or whether the machine had a base and was bolted on.

Q. It rests on a cement base?

A. Yes.

Q. I believe that machine protrudes down below the level of the floor?

51 A. Yes.

Q. The base of it?

A. Yes.

Mr. REED. You don't mean the base of the machine.

Q. The level of the first floor——

A. The furnaces and the rest of the equipment is resting on individual bolted foundations, to this extent, that I understand the floor of this building, which is about six hundred feet by six hundred feet, has a reinforced concrete slab, seven inches thick, and, upon that concrete slab there was placed a two inch block. The other types of machines, individually, are connected to the concrete block, in the same manner, with bolts, imbedded in the concrete, which then come up through and attach, with nuts, to the individual machines, so that each individual machine is firmly attached to this seven inch concrete slab. I think that covers practically the installation of the majority of the machines. In addition to that, there was some movable items.

Q. Just a minute, Mr. Frauenheim; did you observe the installation of the electrical equipment, in connection with those machines that were electrically driven?

A. Practically all of the machines, I would say, practically all of the machines are direct drive; that is, they have their motors directly attached to the machines, and, then the current is brought to the machine; I haven't got a plan of how they distributed the current, but I imagine it is through conduits.

52 Q. How is it brought to each machine, if you know: is it brought above or through the floor, or underneath, or how?

A. I think it is brought underneath; I think they have their conduits underneath the floor, but I didn't notice particularly; I believe the Company could describe that a little better than I can, but the conduits and electrical attachments are made to each machine.

Q. Now, in connection with these machines and the installation, as you have described it, if one of these machines was being replaced by another machine, it would have to be an identical machine, as to size at least, in order to fit on to the base; is that correct?

A. Yes; practically so.

Q. But, to replace one of these machines with a machine of a different type or different size, I suppose the bolts and nuts protruding from the cement would not fit the new one, unless they were replaced, at least?

A. That is right; they would have to change it, in order to suit the other condition.

Q. Now, in this type of construction, which you have spoken of, is that the ordinary and customary manner of installing similar machinery in a plant?

A. Yes.

Q. Was there any other machinery there, that you saw, that was movable?

53 A. Yes; there was five five-ton electric Yale trucks, that they used for transferring their manufactured article from one division to another.

Q. They are portable, I suppose?

A. Yes.

Q. And travel about on their own power?

A. Yes; electric power.

Q. And they are used in connection with the plant?

A. Yes, sir.

Q. This Beaver County Exhibit No. 1, is that a list of the machinery that you observed, that you looked at, when you were in the plant?

A. Yes, sir.

Q. That list of machinery is in the Curtiss-Wright plant, in Borough Township?

A. Yes.

Mr. MARSHALL. We offer Beaver County Exhibit No. 1 in evidence.

Mr. REED. We are not objecting to that; the only thing I do want to state, in connection with the offer is, does this relate back to the previous statement on the record, with respect to our

right to introduce testimony to show whatever changes might have been made since the first of the year?

The COURT. Oh, yes; this would be subject to any testimony that may be offered to contradict it. The exhibit is admitted.

(Beaver County Exhibit No. 1 for identification, received in evidence.)

Mr. MARSHALL. Cross-examine.

Cross-examination by Mr. REED:

Q. Mr. Frauenheim, I understand that your trip there yesterday, or the day before, was your first trip through this plant?

A. Yes.

Q. So that, you, personally, would not be familiar with the machinery that would be in there on, say, December 31st, 1942?

A. No, sir.

Mr. REED. That is all.

Mr. MARSHALL. That is all.

(Witness excused.)

Mr. MARSHALL. The County rests.

(Whereupon, the appellee rested its case.)

55 APPELLANT'S EVIDENCE

J. E. WHITE, called as a witness on behalf of Appellant, having been first duly sworn, testified as follows:

Direct examination by Mr. REED:

Q. What is your full name?

A. J. E. White.

Q. By whom are you employed, Mr. White?

A. Curtiss-Wright Corporation, Propeller Division.

Q. In what capacity?

A. My official title is Chief of Defense Plants Department.

Q. Will you just explain what that is?

A. At the initiation of the—prior to the establishment of the National Emergency, the provision for emergency facilities was instituted by the United States Government, through its armed services; my particular department was assigned the responsibility for handling all of those facilities, in the nature of a coordinator.

Q. How long have you been acting in that capacity?

A. Since May 12th, 1941.

Q. Were you acting in that capacity, at the time of the installation of the machinery by Defense Plant Corporation in this plant in Borough Township?

A. I was.

56 Q. Are you familiar with the machinery that was there installed?

A. To a general extent; yes.

Q. What do you mean by "to a general extent"?

A. I don't have available, in my own memory, a detailed list of the machinery.

Q. No; were you familiar at the time, not now; I don't ask you to recall it all now, but were you familiar at the time of the installation of this machinery in the Defense Plant Corporation, at the time it was being originally equipped?

A. Oh, yes.

Q. Was that part of your duty?

A. The actual installation of the machinery was in charge of our Chief Construction Engineer.

Q. Who was that?

A. Mr. J. A. Bender.

Q. Mr. Bender is in Court here, is he?

A. He is.

Q. Were you and Mr. Bender present here frequently or most of the time when this machinery and equipment were installed there in this plant?

A. Mr. Bender actually resided in this area during the construction and installation of the building. I made frequent trips, myself, to this particular plant.

Q. Were you familiar with the type of machinery and equipment that were placed in the plant?

A. I was.

57 Q. Do you know where the machinery was procured?

A. Yes.

Q. Were you familiar with the manner in which the machinery was placed in the plant, that is, the type of the annexation or manner in which it was set or placed?

A. That is a physical detail that Mr. Bender is more familiar with than I am.

Q. Mr. White, I believe that, prior to the operation of this plant in Borough Township, there was a plant being operated on Neville Island, near Pittsburgh, in Allegheny County, is that correct, for the construction of airplane propellers?

A. Curtiss-Wright operated a plant at Neville Island.

Q. Was the machinery in that plant used in the equipment of this plant at Borough Township?

A. Yes.

Q. The same, identical machinery?

A. Certain machines were actually physically transported from the old plant to the new plant.

Q. What type of machines?

A. Lathes, milling machines, presses, furnaces, air compressors.

Q. Was the Neville Island operation operated under a lease by Curtiss-Wright?

A. The building, in which we manufactured propeller blades, was leased from the Pittsburgh Screw and Bolt Company.

58 Q. Were you familiar with the manner in which the machinery in that plant was affixed to the floor of the plant?

A. I was.

Q. Was the character of the annexation similar to the character of the annexation of the identical machines, later, in the Curtiss-Wright plant in Borough Township?

A. Yes.

Mr. REED. If the Court please, Mr. Bender was the actual engineer in charge. I would like to ask Mr. White to step aside and put Mr. Bender on. Go ahead and cross-examine.

Mr. MARSHALL. Are you through with him?

Mr. REED. No.

Mr. MARSHALL. We will cross-examine later.

(Witness temporarily excused.)

J. A. BENDER, called as a witness on behalf of Appellant, having been first duly sworn, testified as follows:

Direct Examination by Mr. REED:

Q. What is your full name?

A. J. A. Bender.

Q. By whom are you employed, Mr. Bender?

59 A. Curtiss-Wright Corporation, Propeller Division.

Q. What is your position?

A. I am officially known as Chief Construction and Plant Engineer, for the division.

Q. Were you connected with the Curtiss-Wright Company, at the time of the construction of the Defense Plant Corporation, in Borough Township?

A. Yes; I was.

Q. In what capacity were you working there?

A. My official title, at that time, was Plant Engineer of the Beaver plant, and I was responsible for the design of the plant, its construction, the installation of all machinery and equipment; the design and purchase of miscellaneous equipment.

Q. Did you devote your full time, then, to the construction and equipment of this plant in Borough Township?

A. No; I devoted six days a week to it, and one day to a plant in Indianapolis.

Q. Well, was the construction of this plant, and the installation of the mechinery, done under your direction and control?

A. Yes.

Q. Were you familiar with all of the machinery that was installed in the plant?

A. Yes.

Q. Prior to that time had you been familiar with the machinery that was installed in the Neville Island plant?

60 A. Yes.

Q. Of Curtiss-Wright?

A. Yes.

Q. Was some of the machinery in the Neville Island plant transported and installed in the Borough Township plant?

A. All the machinery at the Neville Island plant was installed in the Borough Township plant, except one piece of equipment, which we sold.

Q. It was sold?

A. Yes.

Q. Could you enumerate the equipment, generally, that was taken out of the Neville Island plant and installed in the Borough Township plant?

A. Yes; we moved X-ray machines; large milling machines, with tables up to fifty-six inches in length; we moved the upsetting machines that Mr. Frauenheim mentioned; air compressors; hydraulic presses, ranging in size up to two thousand tons; we moved miscellaneous rigs and benches; turret lathes; demagnetizers.

Q. Were the air compressors which were moved the same, concerning which Mr. Frauenheim testified?

A. Yes, two of the air compressors now installed in the boiler house, in the Beaver Plant, were moved from Neville Island.

Q. Did the Neville Island plant devote its activities to the manufacture of airplane propellers?

A. No, the Neville Island plant was devoted to the same
61 manufacture as the Borough Township plant is now, that is hollow blades for airplane propellers.

Q. Then, the Borough Township plant now manufactures the same product, exactly, as the Neville Island plant did?

A. Exactly.

Q. Was there any damage to the Neville Island plant by reason of the removing of this machinery?

Mr. MARSHALL. We object to that, your Honor, it has nothing to do with this assessment.

The COURT. What is the purpose of this inquiry, Mr. Reed?

Mr. REED. The purpose of this is that while we are involved with a Pennsylvania problem here, we are also involved with a Federal problem, and the question as to the damage which might ensue from the removal of the machinery might prove material—

Mr. MARSHALL. We will withdraw our objection.

The COURT. You propose to show that they were removed without damage to the building as constructed; itself?

Mr. REED. Yes.

The COURT. Very well.

62 A. What was the question?

Mr. REED. Read the question.

(Question read by stenographer, as follows:

"Q. Was there any damage to the Neville Island plant by reason of the removing of this machinery?")

By Mr. REED:

Q. Let me restate that, this way: Was there any damage upon the building or freehold of the Neville Island plant, by reason of the removal of this machinery that you have testified to?

A. No, there wasn't.

Q. Will you please explain the manner in which the equipment in the Borough Township plant is annexed or fixed in place?

A. Most of the equipment is placed on the wood block floor.

Q. Just explain to the Court what this wood block floor is?

A. That is a two-inch layer of wood, cut corewise, to form a wearing surface over the concrete, so that the concrete will not chip off or crack, due to the dropping of steel bolts and plates.

Q. Are these wood block removable or not?

A. Yes.

Q. Is there any damage done to the wood block by removing them?

63 A. Any wood block can be replaced, if some care is exercised.

Q. Proceed, then.

A. The largest portion of the machinery is merely placed on the floor; occasionally, it is necessary to provide lag bolts and expansion shields, in the concrete, in order to keep the machinery from shifting sideways, due to vibration, and thereby get out of alignment. We have some equipment, for which, due to the nature and its bulk, we are forced to provide extra foundations; such machines would include the upsetting machines, or the hydraulic presses; air compressors; the induction furnaces, which were mentioned by Mr. Frauenheim, do not sit on foundations; they merely sit on the concrete floor, from which the wood block has been removed. As a matter of fact, we shipped one of those machines yesterday, on half an hour's notice, to our New Jersey plant, and, I think, by five o'clock today, it will be running down there.

Q. Do you move this machinery frequently?

A. Yes; in the last eighteen months, we have probably rearranged ninety percent of the machinery that is now installed in the Borough Township plant.

Q. Was any damage done to the building or freehold by reason of the removal, or movement from place to place, of that machinery?

A. No damage of any consequence; merely a matter of patching the wood block floor, replacing the blocks and, perhaps, applying some tar.

64 Q. How frequently would you say that some machinery is moved, in the Borough Township plant?

Mr. MARSHALL. What is that last question?

Mr. REED. Read the question.

(Question read by stenographer.)

A. Some machines might be moved every three or four months; others might sit in one position for two years, depending upon the changes in production.

Q. By reason of change of design or improvements in such designs, are there frequent changes in the machines themselves?

A. Yes. The major problem is obsolescence.

Q. And, from the time that that plant began operations, to the present time, what proportion of that machinery and equipment, would you say, had been replaced by a newer or later type?

A. We have replaced approximately forty percent of the original equipment.

Q. What effect upon the freehold or building, with respect to damage, have these removals of the forty percent caused?

A. None whatsoever.

Q. Now, would you go ahead and tell us more about this annexation; you spoke about the upsetters; how are the upsetters attached?

A. The upsetters are supported by the concrete foundations, but the upsetters are bolted to the foundations.

65 Q. With the exception of the upsetters, what would you say with respect to all of the other machinery in the plant having been moved, from the time of its original installation?

A. Do you mean how many of the machines have been removed or what percentage of them have been removed?

Q. Yes; with the exception of the upsetters?

A. Perhaps seventy per cent of the remainder have been moved and, within the next three months, I believe that some seventy per cent will be moved again, plus twenty per cent more.

Q. What is the occasion for that?

A. We find it necessary to streamline our production lines about once a year, in order to keep up with changes and developments concerning the operation of manufacturing the hollow propeller blade.

Q. And is the manner of attachment of the machinery to the floor done with that in view?

A. Yes; all of the installations are designed with a view towards flexibility; the electrical connections to the machines are merely made by a plug into the "bus" duct above the machine.

Q. Are the electrical lines carried overhead?

A. All of them; we may move a machine forty feet away, and change the electric line just by a plug-in.

Q. They are not carried by a conduit under the floor?

A. No.

66 Q. Mr. Frauenheim has testified with respect to two induction type furnaces; will you please explain the character of that annexation?

A. Well, perhaps I had better explain that an induction furnace, such as that which Mr. Frauenheim has reference to, is nothing more than a high-frequency motor-generator set, using ultra high frequencies, which induce a secondary current on a bar placed in the magnetic field, thereby creating heat. In other words, in furnace of this type, you create high temperature in a piece of steel five inches in diameter and twelve inches long. The machine weighs in the neighborhood of two and a half tons; it is relatively light, and it is bolted into a cast steel frame, carrying a motor generator set, the starting equipment, a cooling fuse, and the induction coils themselves. That entire machine comes in one piece. At the Borough Township plant, we removed the wood blocks above the concrete floor, and rested the steel frame of the machine directly on the concrete floor; that is all that is required to place the machine.

Q. It is not set into a concrete base?

A. No; it isn't.

Q. And does the weight of the machine hold it in position?

A. Yes; in addition to that, the gyroscopic effect of the high-speed motor-generator set will also hold it in position.

Q. Does any machinery or equipment in that building support the building?

67 A. I don't know of any case where that would be true.

Q. In any case that you think of, does the building support the machinery?

A. Only the——

Q. I mean, of course, other than if you call the floor the building; I assume that; I didn't mean to put you out on a limb, like that, Mr. Bender?

A. No; the only place where the building supports equipment, off the floor, would be in the case of hoists, the monorail, or crane runway, but I don't consider that machinery; there are no machine tools, presses, compressors, or manufacturing equipment supported by the building.

Q. In addition to this plant here—withdraw that. I believe, under the contract with Defense Plant Corporation, which is in evidence in this case, that the right to interchange or to move machinery from one plant to another plant is specifically permitted?

A. That is correct.

Q. Is that frequently done?

A. Very, very frequently.

Mr. MARSHALL. If your Honor please, we ask that be stricken out, as the contract speaks for itself.

The COURT. We see no objection to it.

By Mr. REED:

Q. Is the type of annexation of this machinery
68 and equipment, then, affected in any manner by that continual interchange of machinery and equipment?

Mr. MARSHALL. We object; it is immaterial whether they had a right to move it or not.

The COURT. That is true; and we are receiving this testimony as a basis for the contention to the contrary, if they can find any such grounds. Undoubtedly, some Pennsylvania cases have held that dies, jigs, and the like are part of the plant, but we are not precluded from making this inquiry, at least; we think it is proper, and we will consider the legal rules later.

Mr. MARSHALL. Grant us an exception.

The COURT. Exception granted.

A. The design of the method of annexation of equipment has always been as simple as possible, to permit these frequent rearrangements of equipment.

Q. Do the changes in the industry require frequent changes in equipment?

A. Yes.

Q. And interchange of machinery?

A. Yes, sir.

Q. Could the same product which is produced in this Borough Township plant be produced by other machinery, even unlike this machinery?

69 Mr. MARSHALL. If your Honor please, I want to offer an objection here, as incompetent, irrelevant and immaterial. The machinery that was used here in this plant was being used, as

agreed in the agreed statement of facts, for manufacturing purposes and that is the machinery that was used as part of the plant.

Mr. Reed. Well, we would concede that, your Honor, but we also know that, as the case stated has said, in addition to the law of Pennsylvania, there must be consideration given to the Act of Congress, in this particular case, because the Court is going to have to determine, finally, just what was intended by that Section 10-D, of the Act of 1941.

The Court. Well, you may inquire as to that and get an answer. Of course, the stipulation, this thirteenth paragraph, at least, indicates that, as assessed, at the time of assessment, the machinery in the plant was essential to the operation of the plant. Now, if you wish to ask him something that may, possibly, vary that, you may do so; you reserved the right to do that, in the stipulation itself.

Mr. Reed. That is right; the stipulation reserved that right.

70 We, of course, do not contend that machinery is not necessary for the operation of the plant, such as was here being operated. This question is whether other machinery could be used for the purpose of manufacturing a product similar to the product which was here being manufactured?

A. Yes.

By Mr. Reed:

Q. And, in addition to the product which is presently being manufactured, could various other products be manufactured, different products, such as washing machines or refrigerators and so on?

A. They possibly could, with additions and deductions to what we have.

Q. Is this building, as constructed, or would that building, as constructed, be available for some other purpose, other than the purpose for which it is presently being used?

Mr. Marshall. We will object to that as immaterial.

The Court. Mr. Marshall, that all goes to the same question, as to whether or not the machinery is to be considered part of the plant, or whether we are to get back to the old conception that the building is to be considered entirely distinctly from it; we will hear this evidence and reach such conclusions as the law requires, under the evidence. We will grant you an exception.

71 A. The building, as designed and constructed, is a typical manufacturing building; it could be placed in almost any city of the country and do almost any manufacturing type of job which has to be done, excepting something that requires a special type of building. It is typical of the industrial building that has been built in the last eight or ten years, for general manufacturing.

By Mr. Reed:

Q. Now, it has been stated, Mr. Bender, that certain machines are bolted to the foundation; will you please explain how those machines, in which bolts are used, are affixed?

A. In every case where a machine is bolted to the foundation, that is done so as to prevent that machine from kicking out of line, during operations, and affecting other nearby machines, and, in that case, a concrete foundation is prepared, through which bolts protrude, these bolts being secured in pipe sleeves, to allow some flexibility of movement; the machine is fitted over those bolts and grouted, and nuts placed on the bolts above the machine. There are, however, only five or six pieces of equipment in the plant that are on foundations like that.

Q. How would you remove those machines?

A. Merely loosen the nuts and jack the machine up; there is no bond between the foundation and the machine.

Q. Would any damage be done to the floor by doing that?

A. No; in most cases, you could merely fill in the space
72 from the foundation to the top of the floor and make the floor similar in appearance and even with the floor in the rest of the building.

Q. How are the other machines, then, connected in place or attached, in places where bolts to the foundation are not used?

A. Well, the machines are heavy enough to sit in position and stay there by themselves. However, in some cases, such as long bedded lathes, due to the war program, the manufacturers have not had enough steel, and they have had to cut out so much steel from the body of the lathe, that they would have to be fastened to the flood, to keep it straight. We have some machinery in this plant today, exactly of the same type, and some of it is bolted and some of it is not, and we have both conditions in other plants doing exactly the same job.

Q. What other type of annexation do you have for these machines?

A. We have no other; just those that sit on foundation and are bolted. We have a few machines that sit on foundations, that are not bolted down; they just rest there. Our main machines just sit on the floor; sometimes, they are lag screwed through, to keep them from moving, creeping sideways, slowly.

Q. If you wish to move that type of machinery, what is necessary?

A. Just picking the machine up and moving it, and, if the bolts remain, just burn them off, in some cases expansion sheathes, and the only damage is to the wood block.

73 Q. Would there be any damage done, other than to the wood block?

A. No.

Q. Could that be replaced, readily?

A. Yes.

Q. Have you had a chance to examine Exhibit No. 1, Mr. Bender?

A. Yes.

Q. Can you tell us, Mr. Bender, from looking at Exhibit No. 1, what machinery has been placed—machinery and equipment has been placed in the plant since December 1942?

A. Yes, I can indicate some of the items on here that have been placed since December 1942.

Q. With the idea of the definite type rather than quantity; can you do that?

A. Yes; the one major item are these electrical circular pit type furnaces, indicated on page 5, a little below the center of the page, "Three circular pit type electric furnaces," and "two convection pit type furnaces." Both those items were put into operation since December 1942.

Mr. MARSHALL. What items are those?

Q. Here they are, "Three circular pit-type electric furnaces," and "two conviction pit type furnaces." Anything else?

A. In the same category are the items on page three, a little above the center of the page, "Six horizontal fluid screw rigid mills," and I believe there were one or two of those units
74 at the plant, in December, although they had not been installed or operated, and, all those that are there now have been installed since December and have been operated since then. That is an item that was caused by change in design and size of the product.

Q. I direct your attention to page six, under "Boiler House," the item of "Three centrifugal pumps"; are they movable? Just tell us how they are installed?

A. Actually, I believe, the intent is that those items are the air compressors, that Mr. Frauenheim had reference to.

Mr. FRAUENHEIM. Boiler feed pumps.

A. Boiler feed pumps?

Mr. FRAUENHEIM. That is right.

Q. The boiler feed pump contains three basic units, a motor, a centrifugal pump and a cast iron case. Both the motor and the pump are bolted to the cast iron base, at the factory, with a flexible or universal coupling. The cast iron base is then set on a concrete pad or foundation, to install the machine at its proper elevation and in line with the piping that would run to it, but they are relatively minor units.

Q. What would be necessary to move those motors, or those pumps?

A. Pardon me?

Q. What would be necessary to move those motors, or those pumps?

75 A. Just disconnecting the piping and loosening the nuts that fasten down the base, and lift the entire unit off.

Q. Now, in addition to the various means of annexation to which you have testified, how are the benches and things like that held in place?

A. A large number of them merely just rest on the floor; some of them are fastened to the floor, the wood block, with nails; some are fastened to the wood block with lag screws, and others that are used for pounding, are fastened into the concrete, with, probably, half-inch bolts and expansion shields; some are fastened in with lead shields; however, in the last four months, perhaps, seventy percent of the benches in the plant were removed.

Q. I didn't hear that.

A. I said, in the last four months, perhaps, seventy percent of the benches in the plant were removed entirely, and put in storage, and the Court can look for evidence of the benches having been there.

Q. Well, did their removal cause any damage of any kind to the freehold or the building?

A. No, none whatsoever.

Mr. Reed. Cross examine.

76 Cross examination by Mr. Marshall:

Q. What are you referring to, when you speak of benches; what do you mean by benches?

A. We use benches for hammering on blades; for a lathe gauge, for determining the dimensions of blades; we use benches to support the blades, while grinding operations are performed, and, also, we use benches for the manufacture of templates, which are used in the manufacture of blades.

Q. These benches are not part of the machinery; they are just usable tables or benches, on which you can lay those blades for checking purposes?

A. That is correct; some are portable; some are fastened down to prevent their moving around.

Q. Well, those benches are not machines at all; they are just like tables?

A. Well, they are just as much a machine as any manufacturing machine is, because they are fitted with gauges that do work, perform a useful operation.

Q. You wouldn't think a mere bench that you lay a blade on, when you want to cool it, would be the same as a shaper, or one of those things, would you?

A. Why, it doesn't perform the same function as a shaper.

Q. Mr. Bender, you say you removed all that machinery from the Neville Island plant, to Beaver, except one piece, which you sold; you operated that plant on Neville Island as a manufacturing plant, in making propeller blades?

77

A. Yes.

Q. After you moved the machinery all out, what did you have in your plant?

A. On Neville Island?

Q. Yes; it was an empty building, wasn't it?

A. Yes.

Q. When you moved your machinery out, you didn't have any manufacturing plant left, on Neville Island, at all, did you?

A. We didn't.

Q. That is what I say; you had an empty building; you brought that machinery to this plant and installed it, and you used it there to manufacture aircraft propellers?

A. Yes.

Q. Now, this machinery that you had in the plant in Allegheny County, was in a leased building; you leased the building from——

A. The Pittsburgh Screw and Bolt Company.

Q. The Pittsburgh Screw and Bolt Company?

A. Yes.

Q. Who owned the machinery in the Neville Island plant?

A. Part of it was owned by Defense Plant Corporation, and part of it was owned by Curtiss-Wright.

Q. And, you brought it all down and installed it in the Beaver plant?

A. Yes.

78

Q. And, it is all being used there, now, in connection with the present plant?

A. No.

Q. Well, anything that you haven't taken out is being used?

A. Well, there might be some that is not used, that hasn't been taken out.

Q. Well, it was brought in here, in connection with the Beaver plant, wasn't it?

A. Yes.

Q. Now, the machinery that was installed in the plant here is being used for one purpose, and that is the manufacture of aircraft propellers?

A. Yes.

Q. Now, then, you say you had some furnaces that have been moved from one point to another; if you did move them from one point to another, in the building, did you still use them in

connection with the plant, or the manufacture of propellers; that is correct, isn't it?

A. Yes.

Q. Now, when a machine is broken or worn out, or, for any reason, you want to exchange it and replace it with another machine, then, the new machine takes the place of the old, and it is used in connection with the plant, in the same capacity; that is true, isn't it?

A. It could be; yes.

Q. Well, isn't it true, when you bring in a new machine, it is used in connection with your manufacturing plant?

79 A. Yes.

Q. And, all the machinery that is down in that plant is used in connection with the Curtiss-Wright Corporation, under this lease, for the manufacture of aircraft propeller blades?

A. Yes.

Q. Who determines the question of what machines shall be taken out and replaced in the Curtiss-Wright plant in Borough, Township?

A. It might be determined by the Plant Engineering Department, or it might be determined by some other department in the plant, or it might be determined by the Army Air Corps, or by the Defense Plant Corporation, depending upon conditions and circumstances.

Q. I understood you to say that some of the machines are put on cement foundations and bolted down?

A. A very few.

Q. Others are not put on cement foundations and bolted down to the cement floor that is underneath that seven inch wood block floor?

A. That is correct.

Q. That particular wood block floor just rests on top of the cement slab; the seven inch wood slab?

A. That is right.

Q. And you have it floored over, and if you want to bare the cement any place, to put a machine in, you simply lift out whatever blocks are necessary, and, if it is necessary to put

80 a foundation in there, you put it in on top of the cement base, and, if you wish to put lag screws or bolts in, you put them in the cement, and let them extend out above the floor?

A. If a cement base is necessary, it is necessary to go through the floor.

Q. Don't you have several machines installed in that plant, under which you have built foundations that go completely through the cement slab?

A. Yes; there are a few.

Q. These machines, whether bolted down or screwed down, or bolted on the foundation and resting on their own base, those machines are all used for different purposes, in connection with the manufacture of aircraft propellers, in that plant?

A. That is right.

Q. Are the Curtiss-Wright machines that were brought down from the other plant intermingled with the Defense Plant Corporation machines?

A. To my knowledge; yes.

Q. Mr. Bender, when you removed one of those large machines, you said, a few minutes ago, that you pulled it out; how do you repair a situation like that?

A. Well, in almost all cases the foundation is below, the top of the foundation is below the level of the floor.

Q. What do you do to repair it?

A. We put a fill of dirt, up to the level of the bottom of the concrete floor, pour a new concrete floor in that area, and put wood blocks in there, and that gives a uniform, level floor throughout, without there being any evidence of a foundation left below.

Q. Now, you have some others that rest on the level of the floor, that you have fastened to lag bolts in the cement floor, through the seven inch slab; now, when you take one of those machines out, who do you do with those bolts that are sticking up through the cement; do you saw them off or how do you get rid of them?

A. If the bolt was put in with the head down and the threads up, we saw it off or burn it off, but most of them are put in with the threads down, into a lead expansion sheath; in those cases, we just unbolt them.

Q. As I understand you, you bore a hole in the cement, drive a lead plug in, and screw them in?

A. Yes.

Q. And, that screws it down in the same manner as if the bolt were reversed and you bolted it down with a nut?

A. That is correct.

Q. Did I understand you to say that some of these heavy machines are set right on top of these two inch blocks, with a lag screw into the block itself, to hold them in place?

A. That is right.

Q. What kind of machine would that be?

A. Some of the welding jigs we installed there, or some of the milling machines that were installed in there, in that manner; and some aren't even held by a lag screw; the only reason we use a lag screw is to prevent the machine from walking sideways, due to vibration. It is not necessary to hold the machine down; the machine is heavy enough itself.

Q. That would be machines used for light work?

A. It might do very heavy work, but the movement of the machine is caused by the velocity of the moving parts.

Q. And, due to the severe vibration, that machine has to be screwed down in the same way, too?

A. Usually, yes.

Mr. Marshall. That is all.

Mr. Reed. If the Court please, we have brought some pictures, but, if your Honor is going down there, we will not introduce them.

The Court. Just one question that I would like to ask Mr. Bender; it probably has been covered but I might understand it better, if I state it in my own way and get an answer.

By the Court:

Q. Would you say, Mr. Bender, that at the time this as-
83 sessment was made, in 1942, the machinery which was installed in that plant, and being used in the plant at the time, was reasonably necessary to the operation of the plant, in making the product for the production of which the plant was designed? Maybe that is a little involved.

A. Well, it is; because we designate the plant as the building, and you designate it here as the building and equipment.

Q. Of course, we are not considering ourselves bound by your construction of what the plant is. We are simply inquiring: here is a building; something is being done in that building; by the use of certain machinery, and, as a result of that, there is a certain production. Now, was the machinery that was installed in that plant, and used at the time the assessment was made, reasonably necessary to manufacture that product?

A. The machinery that was installed and in use was necessary, at that time, for the manufacture of hollow blades.

Q. Of course, you stated that the building could be used for a great variety of manufacturing purposes?

A. That is correct.

Q. But, in doing that, there would have to be installed such machinery and equipment as would be proper for the making of the product it was desired to manufacture?

A. I agree with the statement.

Q. This may be merely a matter of curiosity, but you
84 stated that a piece of machinery there was recently removed and was sent down to the plant in New Jersey?

A. Well, we move machines at the rate of one or two a week, sometimes; in fact, in three weeks time from now we are going to move forty-five machines out.

Q. That is what I was getting at; is that your practice, to move machinery from one plant to another?

A. It is a very unhappy habit for us.

Q. Why do you do that?

A. To take advantage of machinery that is available, if it is critical; not to have to go out and buy it.

Q. When you move a piece of machinery from that plant in Borough Township, do you generally replace it by something else, or has it become unnecessary?

A. It depends; occasionally, we remove a piece of machinery out and we know another one will be in within a few weeks, to replace it, if we don't need it, but, it may have become obsolete because of a change of design in the product.

Q. I presume, in your business, it is the same as in other businesses, you attempt to improve the design of your product?

A. That is the basis on which we do our business.

The COURT. We think that is all.

85 Redirect examination by Mr. REED:

Q. Mr. Bender, are there frequent changes in the design of propeller blades?

A. Yes; very, very frequent; they are constantly changing.

Q. And, is that one reason for such a constant change of machinery and equipment?

A. Yes. Usually a change in design means a change in procedure for manufacturing, not only because of change in size but because of physical characteristics that are required. It is entirely possible to assume that six months from today that equipment in the Borough Township plant could be obsolete, and entirely new equipment installed to replace it, because of a basic change in procedure.

Q. And, is that a necessary risk that you must expect in the manufacture of propeller blades?

A. Yes; that is because there is no choice but to make a quick change to do that; if the Government requires a new type of propeller, for a new type of airplane that is superior to anything that has been designed heretofore, you can't say, "No, we can't change; because it costs too much money," you must change.

Q. Is that typical of the airplane industry?

A. Unfortunately, yes; that, perhaps, explains why we have been partially successful.

Q. And, would you say that the airplane industry differs, in a large degree, from other industry, in that connection?

86 A. I think there are a few other industries that have been equally as progressive in their thoughts and actions; automobile body development is one, and plastics, and plasticizing, is another.

Q. Well, is there anything static about the airplane industry?

A. I don't think I am qualified to answer that question.

Q. Suppose all the equipment and machinery was moved out of that plant, could it still serve a useful purpose?

A. Oh, yes.

Mr. MARSHALL. We object to that.

The COURT. What is the use of objecting to it? We all know it is meaningless, from the standpoint of the Pennsylvania rule.

Mr. REED. That is correct.

The COURT. We don't understand why you have spent so much time on it. He has already testified to that effect. Answer the question.

By Mr. REED:

Q. Without any equipment, it could be used as a warehouse, couldn't it?

A. Yes, it could.

Mr. REED. Cross-examine.

87 Re-cross-examination by Mr. MARSHALL:

Q. If you took all this machinery out and used this building for a skating rink, it wouldn't be a manufacturing plant, would it?

A. Obviously not; obviously, if you used it for a skating rink, it would be that.

Mr. MARSHALL. That is all.

Mr. REED. That is all.

Mr. MARSHALL. Your Honor, I would like to renew my objection to all of this testimony having to do with the removal or substitution of machinery, as incompetent, irrelevant and immaterial, and having nothing whatsoever to do with the question at issue. We offered testimony to show the method of installation, to show how the machines were installed, and the question of removal or substitution of other machinery has nothing to do with the question of the assessment of the property and machinery that was in there, at the time the assessment was made, and being used in connection with the manufacturing plant, and necessary and essential for its operation as such.

The COURT. We think we will permit it to stand, subject to you objection, and grant you an exception. It tends only,

88 it seems to us, to show the character of the business with reference to possible changeableness of any equipment, and, as bearing upon the manner of installation, possibly, and the relation of the equipment to the building itself. We may conclude, after all, that it is meaningless in this case, if we find that Judge Drew was right, invariably, but, if we take a different

view, it might be worth while considering. Of course, notwithstanding these changes, Mr. Bender, we think we all understand this, there are changes in every business, changes in methods, changes in products, changes in practice and design, but, at any particular moment, they may do some particular thing, and they would make it with some particular machinery and equipment, and, if you assessed it at that time, that is the property you are assessing.

* * * * *

FRIDAY, JUNE 25TH, 1943.
Nine o'clock A. M.

Hearing resumed pursuant to adjournment:
Present: Honorable Frank E. Reader, P. J., Honorable Henry H. Wilson, J.
Appearances: Counsel, same as before.

Stipulation re assessment

89 MR. CRAWFORD. May we stipulate on the record that the assessment of three hundred and eighty-eight thousand dollars does not include the boiler house and equipment as listed in County's Exhibit No. 1, page 6?

MR. MARSHALL. That is all right.

MR. CRAWFORD. That may be stipulated?

MR. MARSHALL. Yes; this is his list of machinery and the type of installation.

MR. CRAWFORD. In other words, in the assessment of the boiler house, in the stipulation, the items shown on Exhibit 1, page 6, were not included?

MR. MARSHALL. Yes; that he didn't include those figures in the cost of machinery that Mr. Bender gave us.

MR. CRAWFORD. We can put Mr. White on the stand, to prove that.

MR. MARSHALL. You can add to the stipulation that I am informed that the appraised value of the machinery, as set forth in the assessment, does not include the boilers installed——

90 MR. CRAWFORD. And the boiler house item shown on page 6 of Exhibit 1?

MR. MARSHALL. That is all right.

MR. CRAWFORD. Is that all right?

MR. MARSHALL. O. K.

MR. CRAWFORD. I think that covers it.

MR. MARSHALL. I would like to ask Mr. White one question.

J. E. WHITE, having been previously duly sworn, was recalled and testified further, as follows:

Further cross-examination by Mr. MARSHALL:

Q. Mr. White, who owned the machinery that was in the Curtiss-Wright plant on Neville Island, before it was removed to Beaver?

A. The machinery in operation at Neville Island, part was owned by the Defense Plant Corporation, and part was owned by Curtiss-Wright Corporation.

Q. Do you know in what proportions?

A. I am sorry, I wouldn't have any figures available, at the present time.

Q. At the time they operated the plant at Neville Island,
91 the Defense Plant Corporation was interested in the production of aircraft propellers; wasn't it?

A. I don't quite understand that question.

Q. Strike that question out. At the present time, this plant is leased by the Defense Plant Corporation to the Curtiss-Wright Corporation?

A. The Borough Township plant: yes.

Q. In other words, there was some arrangement between the Defense Plant Corporation and the Curtiss-Wright Corporation, as to this plant on Neville Island, prior to its being moved to Borough Township; what was that arrangement?

A. The agreement of lease between Defense Plant Corporation and Curtiss-Wright Corporation was in existence prior to the completion of the Borough Township plant. To expedite production, certain of the equipment under the lease was originally installed in the Neville Island plant, pending completion of the Borough Township plant.

Q. Then, the arrangement between the Defense Plant Corporation and Curtiss-Wright Corporation, as to its Neville Island plant, originated just about the time that arrangements were made for building the new plant in Borough Township, is that correct?

A. Well, the agreement of lease was dated March 5th, 1941; prior to that time, we had the operation at Neville Island.

Q. Under the complete management of Curtiss-Wright Corporation?

A. That is correct.

92 Q. All right; now, when you moved to Borough Township, you brought from the Neville Island plant the machinery that was owned by the Curtiss-Wright Corporation, and also any machinery that had been installed in the Neville Island Plant by the Defense Plant Corporation, and leased to the Curtiss-Wright Corporation?

A. That is correct.

Q. Do you know, when you brought all of that machinery to Borough Township, whether or not the Curtiss-Wright Corporation deeded that or sold that to the Defense Plant Corporation, in connection with its ownership of the rest of the plant, or did you just mingle it in with what we have indicated by Mr. Bender?

A. The original corporate owned assets, located at the Neville Island plant, have not been deeded to the Defense Plant Corporation; there may be one or two exceptions to that, but they would be minor.

Mr. MARSHALL. I think that is all.

Redirect examination by Mr. REED:

Q. Is any of the machinery which was originally in the Neville Island plant still in use at the Borough Township plant, or has it all been removed or become obsolete?

93 A. Without checking the records, it would be a little hard to say, exactly, but I am sure there is considerable of the original equipment presently being utilized.

Q. What proportion of the equipment in the Borough Township plant, in December 1942, was owned wholly by the Defense Plant Corporation, and what proportion of the machinery belonged to the Curtiss-Wright Corporation?

A. Of the total machinery located in the Borough Township plant in December, approximately ninety percent, the title was vested in the Defense Plant Corporation; the remaining ten percent were corporation owned assets.

Q. When you say, "ninety percent, title was vested in the Defense Plant Corporation," was the payment for that ninety percent made for the Defense Plant Corporation, or was it purchased as their own equipment?

A. Under the agreement of lease, Curtiss-Wright acts for and on behalf of the Defense Plant Corporation, and, in that capacity, they arrange for the procurement of the machinery; the bills for the machinery so ordered are paid by Defense Plant Corporation, through one of the Federal Reserve Banks, either New York, Chicago, or Cleveland.

Q. Payment is not made by Curtiss-Wright Corporation, then, even in the first instance?

A. In the first instance; no.

Q. Mr. White, Mr. Marshall used the word "mingled"; was the machinery "mingled"; is there any mingling of De-

94 fense Plant owned or Curtiss-Wright owned, or, is each machine designated in some manner?

A. Under the terms of our agrement of lease, we are responsible for the proper identification of all Defense Plant Cor-

poration owned assets, which are, in turn, leased to us. This identification is accomplished by means of serial inventory numbers, marked in private places on the equipment, as well as affixing a tag, which clearly identifies that piece of property as the property of the Defense Plant Corporation.

Q. Is the Curtiss-Wright machinery also tagged?

A. The corporate owned assets are appropriately marked, by a tag, also.

Q. Mr. White, you have used the words, "corporate owned assets", do you mean by that, Defense Plant owned, as well as Curtiss-Wright owned; is that just one general term that you are using there for all the assets, or what do you mean by that?

A. When I speak of "corporate owned assets," I refer, of course, to my own corporation, Curtiss-Wright Corporation owned assets.

Mr. Reed. That is all.

Re-cross-examination by Mr. Marshall:

Q. Speaking about your identification, you have a record of each machine in the plant, regardless of who owns it, isn't that correct?

A. A fixed asset record.

95 Q. Well, the machines that are now there, you have a number on each machine, and, also, that record, or that list of machines also shows who owns each machine; that is the way you determine the ownership, in the office, and not out in the plant?

A. Yes; we have an inventory, or a fixed assets record, as we refer to it.

Q. Now, when you brought your machines down and placed them in the plant, for use for manufacturing purposes, you put each machine at the point in the plant where you wanted to use it, regardless of whether it belonged to your corporation or the Defense Plant Corporation, isn't that correct?

A. Yes; I would say that is true, because there are a great many of the machines that are identical or similar in nature.

Q. But, you didn't take all the machines, regardless of what type, that you owned, owned by Curtiss-Wright Corporation, and place them in one corner of the plant, to keep them away from the others?

A. No.

Mr. Marshall. That is all.

Mr. Reed. There is just one question: Speaking of the 96 records, did you, for the purposes—that is all, Mr. White; we could go on indefinitely, so I think we ought to quit. That is all, Mr. White.

(Witness excused.)

Mr. REED. We rest.

Mr. MARSHALL. The County rests.

(Whereupon, the appellant rested its case.)

(Whereupon, the appellee rested its case.)

(Testimony closed.)

(Discussion here ensued, which was not reported.)

Beaver County Exhibit No. 1

DEFENSE PLANT CORPORATION

CURTISS-WRIGHT CORPORATION—PROPELLER DIVISION, LESSEES

Borough Township, Beaver County, 6/23/43

The total machinery and equipment assessment, as fixed by the County Commissioners for the year 1943 is $388,000.00.

It is understood that approximately all of the above list of machinery and equipment was installed on these premises prior to December 31, 1942.

Very respectfully submitted.

H. T. FRAUENHEIM,
Machinery Appraiser.

97 *Defense Plant Corporation—Curtiss-Wright Corporation—Propeller Division, Lessees*

Borough Township, Beaver County	6/23/43
	H. P.
Main Plant Building, approximately 600' x 600'	
1 E. O. T. Crane—5 T. (Niles)	3½
1 E. O. T. Crane—10 T. (Niles)	7½
1 Vertical Drill Press (Cinci.)	7½
1 48" x 8' Eng. Lathe (Cinci.)	44-30
44 Special 36/96 Hydr. Milling Machs. (Cinci.)	4-7½
4 34/60 Hydr. Milling Machs. (Cinci.)	5-5½
5 No. 2 Plain Cutter Grinder (Cinci.)	15
1 Milling Machine, 144" table (Fitchburg)	6-30
6 Horizontal Fluid Screw Rigidmill (Sunstrand)	4-100
4 Surface Grinders—E. D., (Hanchett)	2-7½
2 Vertical Jig Boring Milling Machs. (R. P.)	6-7½
5 24" x 16' Eng. Lathes—H. D. (Boye & Emmes)	6-7½
6 24" x 11' Eng. Lathes (Monarch)	2-7½
2 22" x 19' Eng. Lathes (Monarch)	5
1 22" x 15' Eng. Lathes (Boye & Emmes)	5-15
5 No. 4-A Turret Lathe (Warner & Swasey)	3-5
3 Thread Milling Machs. (Lees-Bradner)	20
1 36" x 108" Eng. Lathe—H. D. (LeBlonde)	2-7½
2 No. 2 Plain Cutter Grinders (Cinci.)	2-15
9 No. 5-P, H. D. Polishing Lathes (Gardner)	60
3 2000 T. Hydraulic Pressers (Bridsboro)	60
1 1500 T. Hydraulic Pressers (Bridsboro)	2-10
2 300 T. Hydraulic Pressers (Bridsboro)	7½
1 No. 7 End Punch (Beatty)	2-125
2 3000 T. Hydraulic Presses (Bridsboro)	8-7½
8 24" x 16' H. D. Eng. Lathes (Boye & Emmes)	2-7½
2 24" Shapers (G. & E.)	6-7½
6 32" Shapers (G. & E.)	

Defense Plant Corporation—Curtiss-Wright Corporation—Propeller Division, Lessees—Continued

	Borough Township, Beaver County	6/23/43
	Main Plant Building, approximately 600' x 600'—Continued.	*H. P.*
	1 36" Shapers (G. & E.)	10
	1 48" x 48" x 12' Hypro Planer (Cinc.)	25
	1 Hor. Boring, Drilling & Milling Mach. (G. & L.)	10
	2 No. 36 Univ. Mill. Mach. (Van Norman)	2-5
	2 18" x 78" Pacemaker Lath (American)	2-10
99	1 22" x 120" Pacemaker Lathe (American)	15
	1 [illegible]x 54" Pacemaker Lathe (American)	7½
	1 No. 4 Univ. Milling Mach. (Cinc.)	15
	1 No. 2 Univ. Cutter & Tool Grinder (Cinc.)	3
	1 5' Radial Drill (American)	10
	1 No. 60 Drill Grinder (Sellers)	2
	1 60" x 30" Cylindrical Grinder (Norton)	7½
	1 No. 5 Jig Boring & Milling Mach. (R. & P.)	7½
	1 Plain Self Contained Grinder (Cinc.)	20
	1 No. 5 Jig Boring & Vertical Mill Mach. (R. & P.)	7½
	2 36" Shapers (Gould & Eberhardt)	2-10
	3 Special Thread Mill. Machs. (Lees-Bradner)	3-3
	1 75 Ton Hydraulic Press (Hannifin)	10
	7 Simplimatic Lathes (Gisholt)	7-15
	6 24" x 16' Eng. Lathes (Boye & Emmes)	6-7½
	4 No. 74 Centerless Grinder (Heald)	4-5
	2 Traversing Wheelhead Grinders (Cinc.)	2-7½
	3 24" x 16' H. D. Lathes (Boye & Emmes)	3-7½
	1 24" x 16' H. D. Lathes (Boye & Emmes)	7½
100.	6 #7 Grinders (Wolfe)	6-3
	2 #10 Roto Clone Units	3
	1 Automatic Wire-cutting mach. (Lewis)	5
	1 Doall Contour Mach	5½
	1 Doall Contour Mach	5½
	2 Duplex 2-stage Horiz. Air Compressors (Worth.)	2-175
	2 Horiz. 2-stage Air Compr. (Gardner-Denver)	2-20
	1 60,000 lb. Testing mach. (Southward)	7½
	1 Auto. Stub. Lathe (Sunstrand)	5
	1 Auto. Stub. Lathe (Sunstrand)	5
	4 No. 600 Combustion Controller (Selas)	4-40
	3 Circular Pit-Type Elec. Furnaces, 27 K. W.	3-2
	2 Convection Pit-Type Fur. 225 K. W. H	2-7½
	2 No. 2 Cutter Grinders (Cinc.)	2-3
	1 Pipe-threading mach. (Toledo)	3
	1 Do All Contour Mach	5½
	1 6" x 6" Metal Saw (Peerless)	3
	1 Model 10 Grinder (U. S.)	2
	1 316" Jointer (Yates)	1½
101.	1 32" Band Saw (Northfield)	5
	1 Univ. Iron Worker	3
	1 ¾" x 50" Power Squaring Sheer (Stam)	40
	3 Hydraulic Saws (Racine)	3-2
	2 5" High Duty Forging Machs. (National)	2-100
	2 Induction type furnaces (Tocco)	2-225
	1 Car type Draw Furnace G. F. 48" x 54" x 24" (Swindell)	5
	1 Platform Scale 10-T. (Howe)	5
	Boiler House:	
	2 Vertical Boilers C. F. Stoker fired (Comb. Engineering)	2-500
	3 Centrifical Pumps (Worthington)	3-10
	1 Vertical Hot Water Heater (Ins.)	
	1 Tile Silo, cap. 300T	
	2 Vertical steel tanks 6' x 14'	1
	Main Plant Building, Approximately 600' x 600' (continued):	
	112 Atomic Hydrogen Welding Transformers 7½ Amp. each	
	5 5-Ton Elec. Trucks (Yale)	
	Small grinders and other hand tools, all necessary in the production of the articles manufactured in this plant.	

102 In Court of Common Pleas of Beaver County

Opinion and order

Filed June 8, 1944

JUNE 7, 1944.

READER, *P. J.*

The above-entitled case is before us on an appeal by Defense Plant Corporation from the assessment of certain property owned by it in Borough Township, Beaver County, Pennsylvania, for the purpose of local taxation. Following the filing of the appeal a hearing was had at which considerable testimony was taken, and in connection with which counsel for Defense Plant Corporation, and counsel for the taxing authority filed an agreed statement of facts. From the agreed statement of facts and the testimony taken we find the following facts which seem to us to be the only facts material to the determination of the question involved:

FINDINGS OF FACT

1. Defense Plant Corporation, appellant herein, is a corporation created by the Reconstruction Finance Corporation, pursuant to Section 5d of the Reconstruction Finance Corporation Act of Congress, as amended.

2. The Township of Borough is a first-class township in Beaver County, Pennsylvania.

3. The County Commissioners of the County of Beaver, pursuant to the General County Assessment Law, Act of 1933, P. L. 853, Section 501, Purdon's Pa. Stat. Annot. Title 72 (5020-
103 501), as amended, constitute the Board of Revision which hears appeals from assessments from Borough Township and other taxing districts in the County of Beaver.

4. John Howard Pew, et ux., et al., by deed dated April 15, 1941, and recorded in the Recorder's Office of Beaver County, Pennsylvania, in Deed Book 481, page 201, did grant and convey unto Defense Plant Corporation, a corporation created by the Reconstruction Finance Corporation, pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended:

All those certain lots or pieces of land situate in the Township of Borough, County of Beaver and Commonwealth of Pennsylvania, being parts of Academy Lots Nos. 11, 12, and 13; all of Academy Lots Nos. 14 and 15, in the General Plant of Academy Lots, adjoining the Town of Beaver, and part of Outlot No. 1 in the General Plan of Outlots adjoining the Town of Beaver, lying together and together bounded and described as follows:

Beginning at a point in State Highway L. R. 278, commonly known as Route No. 930 at the intersection of the northwesterly side of Georgetown Lane with the center line of Tuscarawas Road, as originally located; thence along the extended northwesterly side of Georgetown Lane, South 54°42′ West 1731.49 feet to the center line of Walnut Lane; thence along the center line of Walnut
104 Lane, North 35°18′ West 859.28 feet to the southerly side of Division Lane; thence along the southerly side of Division Lane and lands now or formerly of Mary J. Harton, North 54°49′ East 255.46 feet to a point; thence along said lands, now or formerly of Mary J. Harton, North 48°40′ west 16.97 feet to a point; thence by other lands of the grantors North 54°49′ East 1283.89 feet to a point in the center of the Tuscarawas Road, as originally located at line of land now or formerly of John S. Sweesy, along the center line of said Tuscarawas Road as originally located South 48°00′ East, 900.92 feet to the place of beginning.

5. Defense Plant Corporation erected on said premises certain buildings and caused the machinery specified in the assessment, hereinafter referred to, to be placed in said buildings.

6. Defense Plant Corporation leased the land, buildings, and machinery to Curtiss-Wright Corporation, a private corporation organized under the laws of the State of Delaware for the manufacture of aircraft propellers as set out in said lease, and from which private profit may be derived by the Curtiss-Wright Corporation. A copy of this lease is attached to the agreed statement of facts, showing the date of the lease to be March 5, 1941. Said Lease Agreement has been amended from time to time but not in any manner affecting the questions presented by this appeal.
105 7. In this appeal there is no dispute as to the amounts of the valuation of the property assessed for the triennial assessment for the years 1943, 1944 and 1945.

8. James W. Eckler, the Assessor for Borough Township, assessed said property of Defense Plant Corporation for real property taxes for 1942, under Section 201 of the General County Assessment Act of May 22, 1933, P. L. 853, as amended (72 Purdons' Statutes, 5020-201, Pocket). An itemization of the property of Defense Plant Corporation, assessed as aforesaid, is as follows:

Nine (9) Acres improved, assessed at $1,100 per acre	$9,900.00
Twenty-four (24) acres, not improved, assessed at $1,000 per acre	24,000.00
Plant building and cafeteria assessed at	338,000.00
Administration Building, assessed at	32,000.00
Boiler House, assessed at	60,000.00
Personnel Building, assessed at	5,000.00
Machinery, assessed at	388,000.00
Total	856,900.00

9. After the tax duplicate had been prepared for the 1942 taxes, and the tax statement mailed to the Defense Plant Corporation, it objected to the inclusion of the machinery, claiming machinery was personal property, and not taxable as real property. On or about the 31st day of July 1942, Curtiss-Wright Corpo-
106 ration paid all 1942 taxes, except upon that part of the property designated as machinery, which has not been paid.

10. At the triennial Assessment made during 1942, the Assessor for Borough Township assessed said property for real property taxes for 1943, 1944, and 1945 triennial period, at the same valuation as previously assessed, and itemized in paragraph 8, above.

11. On March 2, 1943, an appeal was made to the County Commissioners of Beaver County, sitting as a Board of Revision, by Defense Plant Corporation from the assessment made by the Borough Township Assessor, on the grounds stated therein.

12. The County Commissioners of Beaver County, sitting as the Board of Revision, heard Defense Plant Corporation's Appeal on March 2, 1943, and, on March 3, 1943, dismissed the appeal as to the claims for exemption, holding all of the property to be taxable and reaffirmed the assessment made by the Borough Township Assessor.

13. That the machinery of Defense Plant Corporation in its buildings in Borough Township, Beaver County, Pennsylvania, or other machinery, are necessary and essential to its existence and operation as a manufacturing plant for aircraft propellers.

14. The Act of Congress approved June 10, 1941, c. 190 Sec. 3, 55 Stat. 248, U. S. C. A. Title 15 Sec. 610, provided as to Defense Plant Corporation as follows:

107 "Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, County, municipality, or local taxing authority, except as provided in section 742 (a) of Title 31. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The exemptions provided for in the preceding sentence with respect to taxation (which shall, for all purposes, be deemed to include sales, use,

storage, and purchase taxes) shall be construed to be applicable not only with respect to the Reconstruction Finance Corporation but also with respect to (1) the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company, the Rubber Reserve Company, and any other corporation heretofore or hereafter organized or created by the Reconstruction
108 Finance Corporation under section 606b of this title, as amended, to aid the Government of the United States in its national-defense program, (2) the RFC Mortgage Company, the Federal National Mortgage Association, and any other public corporation heretofore or hereafter organized by or at the instance of the Reconstruction Finance Corporation, and (3) the Disaster Loan Corporation, and any other public corporation which is now or which may be hereafter wholly financed and wholly managed by the Reconstruction Finance Corporation. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by any corporation referred to in clause (1), (2), or (3) of the preceding sentence, but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

15. The General County Assessment Law of May 22, 1933, P. L. 853 Sec. 201, provides in part as follows:

"The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes, at the annual rate.

"(a) All real estate, to-wit: Houses, lands, lots of ground
109 and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by law from taxation."

16. Article 9, Section 1, of the Constitution of Pennsylvania, provides in part, as follows:

"All taxes shall be uniform, upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes. * * *"

17. In pursuance of the Constitutional authority, above quoted, the Legislature of Pennsylvania in the General County Assessment Law of May 22, 1933, P. L. 853, incorporated Section 204, which provides for the exemption of certain property from taxation. In subsections a, b, c, d, e, and f of said Section 204, are enumerated various classes of public property, used for public

purposes, which are exempt from taxation in Pennsylvania. Subsection 204 (g) reads as follows:

"All other public property used for public purposes, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same."

18. At the session of General Assembly held in 1943, subsection 204 (g) as above quoted, was amended by Act No. 81, P. L. 110 158 signed by the Governor May 3, 1943, so that the same at this time reads as follows:

"All other public property used for public purposes, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same, but this shall not be construed to include the property, otherwise taxable, which is owned or held by an agency of the government of the United States."

19. From the evidence it appears that the machinery in the plant of the Defense Plant Corporation, in Borough Township, which is the subject of assessment, is placed upon the floor of said plant so that in part it is held in place by its own weight, and in part by attachment to the floor in such manner that it can be removed without damage to the building itself. Not infrequently pieces of machinery have been removed to other plants of Defense Plant Corporation, or the Curtiss-Wright Corporation. Generally the machinery so removed is replaced by other machinery required in the operation of the plant. As hereinbefore stated, it was agreed by the parties that the machinery in the plant at the time of the assessment in question was essential to its existence and operation as a plant for the purposes designed. This was also the testimony of Mr. Bender, the Chief Construction and Plant Engineer (p. 66).

111 DISCUSSION

As originally taken the appeal was from the entire assessment, that is, the assessment of land, buildings, and machinery. By a stipulation entered into by the parties in the course of the proceeding, the appeal was limited to the machinery in question, it being agreed that the land and buildings were subject to local taxation.

Among the grounds of appeal, as originally stated, was the allegation that the taxation sought to be imposed is in violation of the provisions of Article IX, Sec. 1, of the Constitution of Pennsylvania, and the provisions of the General County Assessment Law of Pennsylvania, of May 22, 1943, P. L. 853, providing that public property used for public purposes might be exempt from taxation. This ground was later abandoned by the appellants.

The sole question before us, therefore, is whether the machinery in the plant in question is taxable as real property under the Pennsylvania statute quoted in the Findings of Fact. The determination of this question involves a consideration and construction of the General County Assessment Law of May 22, 1943, P. L. 853, quoted in the Fifteenth Finding of Fact; and of the Act of Congress of June 10, 1941, copies in the Fourteenth Finding of Fact.

In the argument of the case counsel for both parties covered, quite exhaustively, a much wider field than that just indi-
112 cated. We deem it unnecessary to discuss in detail the various questions presented, and the various decisions cited in connection with some of the broader questions involved. We refer to them briefly and generally simply for the purpose of setting the background for the determination of the specific question before us.

So far as we know, the latest case in which the Supreme Court of the United States has passed upon the liability of Federal property and activities to State taxation, is the case of the Appeal of Mesta Machine Company. The opinion in this case was filed May 1, 1944. In the opinion of Justice Jackson the broad rule of law is stated as follows:

"In recent years this Court has curtailed sharply the doctrine of implied delegated immunity. But unshaken, rarely questioned, and indeed not questioned in this case, is the principle that possessions, institutions, and activities of the Federal Government itself in the absence of express congressional consent are not subject to any form of state taxation. The real controversy here is whether, especially in view of recent decisions, taxing authorities of the Commonwealth of Pennsylvania have infringed this admitted immunity."

Where the Federal Government acts within its constitutional powers, property owned by it and used in such activities, and the activities themselves are exempt from state taxation on con-
stitutional grounds. The Federal Constitution within its
113 sphere is the supreme law of the land. There is no question that this immunity is absolute where the property and activity are those of the Federal Government itself. Other questions arise when the activity is conducted by some agency of the Federal Government which agency is itself the owner of the property employed. It is with reference to situations such as this that the first sentence above quoted from the opinion of Justice Jackson applies. In other words, the tendency of the courts of the Federal Government is to limit the immunity of these agencies of the Government.

It is contended in the instant case by the Board of Tax Revision of the County of Beaver that the fact that the property involved in the question before us, the machinery in Defense Corporation plant, above mentioned, belongs to Defense Plan Corporation and not directly to the Government, deprives it of the immunity claimed. Quite a number of cases have been discussed by counsel in their briefs upon this phase of the case.

One of the cases considered, and apparently relied upon very strongly by counsel for the appellee is the case of Penn Dairies v. Milk Control Commission, 318 U. S. 261; 63 S. C. R. 617 (1943). In this case Mr. Justice Stone, in the course of his opinion, uses the following language:

"The trend of our decisions is not to extend governmental immunity from state taxation and regulation beyond the national government itself and governmental functions performed
114 by its officers and agents. We have recognized that the Constitution presupposes the continued existence of the states functioning in coordination with the national government, with authority in the states to lay taxes and to regulate their internal affairs and policy, and that the state regulation like state taxation inevitably imposes some burdens on the national government of the same kind as those imposed on citizens of the United States within the state's borders, see Metcalf & Eddy v. Mitchell, Supra (269 U. S. 514, 523, 524). And we have held that these burdens save as Congress may act to remove them, are to be regarded as the normal incidents of the operation within the same territory of a dual system of government, and that on immunity of the national government from such burdens is to be implied from the Constitution which established the system, see Graves v. New York Ex Rel. O'Keefe, 306 U. S. 466, 483, 487."

This is interpreted as depriving agencies such as Defense Plant Corporation of the exemption from local taxation which was enjoyed by the Government itself. This, however, is not the effect of the case, because this is not the question involved in the case.

In consideration of all decisions it is of vital importance to bear in mind that a case decides nothing beyond the issue actually raised in it. The court in passing upon that issue may
state many general principles, but these do not become de-
115 cided rules of law unless they are essentially involved in the decision of the issue. In the Penn Dairies case, Penn Dairies had sold milk to the Government for use by certain of its Armed Forces. It had sold the milk at a price below that fixed by the Milk Control Commission of Pennsylvania. The sale took place within the State of Pennsylvania.

Later the Milk Control Commission undertook to discipline Penn Dairies by imposing penalties for making sales at a price less than that fixed by the Commission. It was held that the requirement that Penn Dairies comply with the regulation of the Milk Control Commission did not impose an undue burden upon the Federal Government, and that Penn Dairies was not relieved from liability for its violation of the regulations of the Commission by reason of the fact that its product was sold to the Federal Government. The Penn Dairies was not an agency of the Government; it was an independent vendor of material to the Government; and it was clearly held in the case that it did not enjoy any immunity by reason of its position as such vendor. The case therefore does not decide at all that the property or activity of an agent of the Federal Government may not be entitled to immunity from local taxation. It decides nothing upon this question.

A somewhat similar question was involved in the case of State of Alabama v. King & Boozer, 314 U. S. 1; 62 S. C. R. 43 (November 11, 1941). In this case King & Boozer sold lumber to contractors for use by the latter in constructing an army
116 encampment for the United States Army. The lumber was sold on a cost-plus-a-fixed-fee basis. The sale by King & Boozer to the contractors was subjected to the Alabama Sales Tax. This tax was chargeable to the seller, but he was required to collect it from the buyer—in this case the contractors, and through them the Government of the United States. The collection of this tax was resisted by King & Boozer on the ground that it imposed finally a burden upon the Federal Government in violation of its constitutional immunity from state taxes. The tax, however, was held by the Supreme Court of the United States to be valid; King & Boozer were held not to be agents in any sense of the Federal Government; but merely vendors of material designed for its use.

To the same effect is the case of Curry v. United States, 314 U. S. 14, 62 S. C. R. 48. This case grows out of the same general state of facts as the King & Boozer case. It is apparent that neither of them undertakes to determine the law as to the immunity of an agency of the Federal Government.

Another case strongly relied upon by the appellee is the case of Railroad Company v. Pennsylvania, 18 Wallace 5; 21 Law Ed. 787. In this case certain municipal divisions of the State of Nebraska undertook to tax property of the Union Pacific Railroad within their limits. It was urged by the Railroad Company that it was an agency of the Federal Government, and that the tax upon its property would unduly burden the Federal

117 Government in the exercise of its constitutional powers.

The Union Pacific Railroad Company was incorporated by Act of Congress. It received certain grants on condition that it render certain services when required by the Federal Government, such as transportation of troops, of the mail, conveyances of Federal messages over its telegraph lines, etc. It was held, however, that the Railroad was not strictly an agency of the Federal Government. It was essentially a private rather than a public corporation. The tax was upheld. The Court in its opinion discussed at some length the general principles involved, some of which will be quoted in connection with another case to which we are about to refer. The case, however, does not seem to us to be an authority in support of the proposition that the property of a governmental agency does not enjoy in any event the same immunity from local taxation as the Federal Government itself.

A more recent case is that of James, State Taxation Commissioner of West Virginia v. Dravo Contracting Company, 302 U. S. 134; 58 S. C. R. 208 (1937). Dravo Contracting Company, a Pennsylvania corporation, and entitled to do business in the State of West Virginia, in the years 1932 and 1933 entered into four contracts with the United States for the construction of locks and dams in the Kanawha River, and locks in the Ohio River. The State Taxation Commissioner assessed Dravo Corporation for the years 1933 and 1934 for a tax based upon
118 the gross amounts received from the United States under these contracts. The Court first held that the State of West Virginia could levy its tax only upon such proceeds as arose from work done for the Government within the territorial limits of the State of West Virginia. It then considered the question as to whether the tax was invalid on the ground that it laid a burden upon the Federal Government. It was held that it did not in any sense burden the Federal Government, and that the contractor could not claim immunity from the tax on this ground. It was also held that the Dravo Contracting Company was an independent contractor, and that the tax was not laid upon the contract of the Government, but solely upon the earnings of the contractor. In consideration of the questions involved in this phase of the case the Court, in its opinion, used the following language, quoted from the Peniston case, hereinbefore referred to (58 S. C. R. 218):

"Many years ago the Court recognized and enforced the distinction between a tax laid directly upon a government contract or an instrumentality of the United States and a tax upon the property employed by an agent or contractor in performing services for the United States. 'Taxation of the agency is taxation

of the means; taxation of the property of the agent is not always, or generally, taxation of the means." Thomson v. Union Pacific Railroad, 9 Wall. 579, 591, 19 L. Ed. 792. In expounding the grounds for the conclusion that the property of the
119 contractor was taxable, the Court envisaged the serious consequences which would follow if immunity were maintained. In Union P. Railroad Co. v. Peniston, 18 Wall. 5, 33, 36, 21 L. Ed. 787, the Court said:

"'It may, therefore, be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the States in the collection of their necessary revenue without any corresponding advantage to the United States. A very large proportion of the property within the States is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. United States mails, troops, and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the National service. So are steamboats, horses, stagecoaches, foundries, ship-yards, and multitudes of manufacturing establishments. They are the property of natural persons, or of corporations, who are instruments or agents of the General government, and they are the hands by which the objects of the government are attained. Were they exempt from liability to contribute to the revenue of the States it is manifest the State governments would be paralyzed. While it is of the utmost importance that all the powers vested by the
120 Constitution of the United States in the General government should be preserved in full efficiency, and while recent events have called for the most unembarrassed exercise of many of those powers, it has never been decided that State taxation of such property is impliedly prohibited.

"It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents; but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers'."

We call attention to only one other case, also a recent one. It is the case of Graves v. New York et al., 306 U. S. 466; 59 S. C. R.

595 (1939). We quote at some length from this case because it seems to us to state clearly and fully the principles of the law upon the phase of the case which we are now considering. Graves was an employee, in the State of New York, of Home Owners' Loan Corporation. His salary as such employee was subjected to payment of an income tax under a New
121 York statute. He claimed a refund of the tax on the ground that his salary was constitutionally exempt from state taxation because the Home Owners' Loan Corporation is an instrumentality of the United States Government, and that he as an employee of said corporation was engaged in the performance of a governmental function. It will be observed that this case does not involve the question of the taxation of a Federal agency. It is clearly held that the tax was not upon the Home Owners' Loan Corporation, was not paid by it, and was not paid from the funds of the Federal Government. In passing upon the question involved, the Supreme Court said, among other thing (pp. 596, 597, 598):

"The corporation, which is authorized to lend money to home owners on mortgages and to refinance home mortgage loans within the purview of the Act, is declared by Sec. 4 (a), 12 U. S. C. A. Sec. 1463 (a), to be an instrumentality of the United States. Its shares of stock are wholly government-owned. Sec 4 (b). Its funds are deposited in the Treasury of the United States, and the compensation of its employees is paid by drafts upon the Treasury.

"For the purposes of this case we may assume that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the powers of the federal government. Cf. Kay v. United States, 303 U. S. 1, 58 S. Xt. 468, 82 L. Ed., 607.
122 As that government derives its authority wholly from powers delegated to it by the Constitution, its every action within its constitutional power is governmental action, and since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, all activities of government constitutionally authorized by Congress must stand on a parity with respect to their constitutional immunity from taxation. * * * And when the national government lawfully acts through a corporation which it owns and controls, those activities are governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the government itself through its departments. * * *.

"The single question with which we are now concerned is whether the tax laid by the state upon the salary of respondent, employed by a corporate instrumentality of the federal govern-

ment, imposes an unconstitutional burden upon that government. The theory of the tax immunity of either government, state or national, and its instrumentalities, from taxation by the other, has been rested upon an implied limitation on the taxing power of each, such as to forestall undue interference, through the exercise of that power, with the governmental activities of the other. That the two types of immunity may not, in all respects, stand on a parity has been recognized from the beginning. McCulloch v. Maryland, supra, pages 435, 436 of 4 Wheat.,
123 and possible differences in application, deriving from differences in the source, nature, and extent of the immunity of the governments and their agencies, were pointed out and discussed by this Court in detail during the last term. Helvering v. Gerhardt, supra, pages 412, 413, 416, 58 S. Ct. pages 972, 973.

"So far as now relevant, those differences have been thought to be traceable to the fact that the federal government is one of delegated powers in the exercise of which Congress is supreme; so that every agency which Congress can constitutionally create is a governmental agency. And since the power to create the agency includes the implied power to do whatever is needful or appropriate, if not expressly prohibited, to protect the agency, there has been attributed to Congress some scope, the limits of which it is not now necessary to define, for granting or withholding immunity of federal agencies from state taxation. * * *"

* * * * * *

"The constitutional immunity of either government from taxation by the other, where Congress is silent, has its source in an implied restriction upon the powers of the taxing government. So far as the implication rests upon the purpose to avoid interference with the functions of the taxed government or the imposition upon it of the economic burden of the tax, it is
124 plain that there is no basis for implying a purpose of Congress to exempt the federal government or its agencies from tax burdens which are unsubstantial or which courts are unable to discern. Silence of Congress implies immunity no more than does the silence of the Constitution. It follows that when exemption from state taxation is claimed on the ground that the federal government is burdened by the tax, and Congress has disclosed no intention with respect to the claimed immunity, it is in order to consider the nature and effect of the alleged burden, and if it appears that there is no ground for implying a constitutional immunity, there is equally a want of any ground for assuming any purpose on the part of Congress to create an immunity.

"The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from the funds of the government, either directly or indirectly. The theory, which once won a qualified approval, that a tax on income is legally or economically a tax on its source, is no longer tenable. * * *"

125 We think a consideration of the cases hereinbefore discussed and quoted is sufficient to establish that there is no clearly defined rule that property owned by an agency of the Federal Government is necessarily deprived of immunity and subject to local taxation by that fact alone. The nature of the relation of the agency to the Federal Government must, of course, be considered, and the final test, as indicated in the cases considered, is the effect of the tax upon the performance of the functions of the Federal Government.

We are satisfied that we cannot decide the present case solely on the ground that the machinery taxed belongs to Defense Plant Corporation rather than to the Federal Government itself. Where the property is owned by the Federal Government directly, or the activity is that of said Government, the exemption is conclusively implied. For that reason the recent decision in the Mesta Machine Company case does not, in our judgment, control the instant case.

We come, then, to a consideration of what seem to us to be the controlling factors in the present case, the Pennsylvania General County Assessment Law of May 22, 1933, and the Act of Congress approved June 10, 1941. The Pennsylvania statute is copied in part, so far as necessary for our purpose, in the 15th finding of fact. It is conceded by appellant that under this Statute, and the Pennsylvania decisions, machinery located in a Pennsylvania mill or manufactory, and necessary and

126 essential to the existence and operation thereof, is treated, for local tax purposes, as real estate, regardless of the title thereto, or the views of the parties interested therein as to its character, or of its method of affixation to the freehold. Notwithstanding this concession to the Pennsylvania rule, appellant seems to regard the rule as a rather unusual and abnormal development in the law of this State. We think, therefore, that in considering the so-called Pennsylvania rule in connection with

the interpretation of the Act of Congress referred to, it is important to more carefully consider the significance of the Pennsylvania rule. It is not a rule devised for the purpose of reaching a new subject of taxation.

One of the earliest and leading cases in which the rule is stated is that of Voorhis v. Freeman, 2 W. & S. 116. This case did not involve a question of taxation at all. It involved the question of title to certain machinery and appliances in a mill which had been the subject of two sheriff's sales. The first sale was by virtue of a writ of levari facias on a judgment on a mortgage covering a lot or piece of ground, and one iron rolling mill establishment, with the building, apparatus, steam-engine, boilers, etc., part of said establishment. The purchaser at this sale claimed the machinery in question as having passed as part of the real estate. Certain of the machinery or appliances was subsequently sold on a writ of fieri facias and the purchaser at this sale
127 claimed the same. The question was whether the machinery in the plant and constituting a part thereof, was to be treated as real estate or personal estate. It was held that it passed as part of the real estate. The opinion in the case was by Chief Justice Gibson. It is interesting and instructive as showing the basis of the rule established. In part the opinion reads as follows (pp. 117, 118, 119):

"It is true we ruled in an unreported case (Chaffee v. Stewart) that the spindles and other unattached machinery in a cotton-mill, were personal property for purposes of execution, on the authority of certain decisions to that effect, because we were indisposed to be wise above what is written; but on examination of their foundation would probably have led us to a different conclusion. It is unnecessary to pass the learning of the subject in review, as a clear bird's-eye view of it has been spread before the profession by Mr. Justice Cowen in Walker v. Sherman (20 Wend. 636), from which it is evident that no distinctive principle pervades the cases universally, and that the simple criterion of physical attachment is so limited in its range, and so productive of contradiction even in regard to fixtures in dwellings to which it was adapted before England had become a manufacturing country, that it will answer for nothing else. My objection to the conclusion drawn from it in that case, is that the court adhered to the old distinction when the question related to a woolen factory, instead of following out the principle
128 started by Mr. Justice Weston in Farrar v. Stackpole (6 Greenleaf 157), which must, sooner or later, rule every case of the sort. The courts will be drawn to it by its liberality and fitness, while they will be drawn away from the old criterion by its narrowness and want of adaptation to the business and

improvements of the age. By the mere force of habit, they have adhered to it in almost all cases after it has ceased to be a guide in any but a few; for nothing but a passive regard for old notions could have led them to treat machinery as personal property when it was palpably an integrant part of a manufactory or a mill, merely because it might be unscrewed or unstrapped, taken to pieces, and removed without injury to the building. It would be difficult to point out any sort of machinery, however complex in its structure, or by what means soever held in its place, which might not with care and trouble be taken to pieces and removed in the same way, and the greater or less facility with which it could be done, would be too vague a thing to serve for a test. * * * Whether fast or loose, therefore, all the machinery of a manufactory which is necessary to constitute it, and without which it would not be a manufactory at all, must pass for a part of the freehold. This is no more than an enlargement of the principle of constructive attachment; and it is the principle of
Farrar v. Stackpole, glanced at by Lord Mansfield in
129 Lawton v. Lawton (1 H. B. 259 note), who seems to have foreseen its day."

We think the discussion of Chief Justice Gibson clearly establishes the reasonableness of the rule. It was not an accidental or experimental venture. It grew out of the recognition of economic and industrial conditions as they had developed and were developing in the Commonwealth. It is a striking illustration of the truth of the statement of Justice Holmes in his book "The Common Law" to the effect that "The life of the law has not been logic, it has been experience." Like many other principles of law now quite generally accepted, this principle grew up out of the usages and necessities of the community. The rule was followed shortly thereafter in the case of Pyle v. Pennock, 2 W. & S. 390. The rule has been variously applied in the following cases: Patterson v. Delaware Company, 70 Pa. 381; Titus v. Poland Coal Company, 275 Pa. 431; Commonwealth Trust Company of Pittsburgh v. Harkins, 312 Pa. 402; Pennsylvania Chocolate Company for use, v. Hershey Brothers, 316 Pa. 292; Central Lithographing Company v. Eatmore Chocolate Company, 316 Pa. 300; Roos v. Fairy Silk Mill, 334 Pa. 305; McClure v. Atlantic Rock Company, Inc., 339 Pa. 296; Mesta Machine Company Case, 347 Pa. 191.

In the majority of the cases cited the question involved was not a question of taxation at all. In one of the cases above referred
to, the Harkins case, the question was as to whether
130 certain machinery placed in, and an essential part of the manufacturing plant was to be regarded as real estate, and as such subject to the lien of a mortgage of mortgages. In

this case the Court said, in the opinion by Justice Schaffer (312 Pa. 402, 406, 407):

"We think the facts that the machines are removable without injury to the property, and that the patterns, jigs and dies were made solely for the purpose of manufacturing patented machinery and the patents are owned and controlled by the printing company, if admitted, do not take them out from under the lien of the mortgage in view of the rules which have been laid down by us in a number of cases and which accordingly have become rules of property. What was written by Chief Justice Gibson in Voorhis v. Freeman, 2 W. & S. 116, continues to be the law in this great industrial State. Speaking for the court, he said (pages 118-19): * * * nothing but a passive regard for old notions could have led them to treat machinery as personal property when it was palpably an integrant part of a manufactory or mill, merely because it might be unscrewed or unstrapped, taken to pieces and removed without injury to the building. * * * Whether fast or loose, therefore, all the machinery of a manufactory which is necessary to constitute it, and without which it would not be a manufactory at all, must pass for a part of the freehold.' The doctrine laid down in that case was re-
131 affirmed at the very next term of the court in Pyle v. Pennock, 2 W. & S. 390, and has received its latest confirmation in Titus v. Poland Coal Co., 275 Pa. 431, where we said, speaking through Mr. Justice Walling (page 436): 'The Pennsylvania rule is that a chattel placed in an industrial establishment for permanent use, and necessary to the operation of the plant, becomes a fixture and as such a part of the real estate, although not physically attached thereto; in other words, if the article, whether fast or loose, be indispensable in carrying on the specific business, it becomes a party of the realty. * * * Whatever is a necessary part of the machinery for carrying on the business is a fixture irrespective of the manner or its attachment.' Appellants concede that, if a mortgage is placed on an industrial plant, the personal property, such as machinery which is necessary to carry on the business of the plant will be subject to the lien of the mortgage, but they argue that, to have this effect, the machinery must be specifically mortgaged. We think such a principle cannot be deduced from our decisions. Cases from other states, such as Hubbell v. East Cambridge Savings Bank, 132 Mass. 437, much relied on by appellants, have no bearing on the controversy. We have established a legal rule of our own, necessary, as we view it, to the safety of investments."

132 Again, in the Roos case, above cited, the Court said (334 Pa. 305, 308, 309):

"Due to the demands and requirements of our changing economic order, we early developed in this State the principle of an 'industrial mortgage' which included, as part of the freehold, personal property in and about a manufactory. This principle became more important as our industrial life expanded, so that the necessary credits to sustain and finance manufactories and other like industries could be obtained with some decree of certainty that the security offered would be continued. Therefore, it was held that where premises were used in manufacturing or a similar industry, the real estate and personal property necessary to the plant as a going concern were subject to the lien of an industrial mortgage. This opened the way for persons interested in such industries to assure investors in a manufactory not only of a stable security for money loaned on the plant, but one that could not be broken down and destroyed by selling it piecemeal."

It seems to us that these cases, and others of like effect, clearly establish that the Pennsylvania rule under consideration is not a narrow and erratic rule adopted in connection with the subject of taxation, but is a broad rule of property, as stated by Justice Schaffer in the foregoing quotation. It is a long established and essential principle of the Pennsylvania system of law. The Pennsylvania tax system has accepted and applied it for one hundred years. It is recognized in other jurisdictions as well. We think that the rule must be considered in this broad significance in connection with an interpretation of the Act of Congress above referred to.

133

The Act of Congress is copied, in so far as it concerns the present case, in our Finding No. 14. It will be observed that in the first part of the statute as quoted it exempts from state and local taxation the notes, debentures, bonds or other obligations issued by Defense Plant Corporation, and also the corporation itself, including its franchise, its capital, reserve, surplus and income. This exemption is immediately followed by the exception, which reads as follows: "except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." It seems that the statute may have been suggested by a doubt as to whether the property of such an agency is generally subject to state and local taxation. With reference to its personal property, the question is set at rest by the portion of the statute just referred to. It is equally clear that the real property of the governmental agency is permitted to remain subject to such state and local taxation.

The vital question in connection with the present case is what is intended by the Act of Congress by its reference to real prop-

erty. It is contended by counsel for Defense Plant Cor-
134 poration that the term must be given a general meaning which will not include machinery placed in industrial plants of various characters, such as that which is sought to be taxed in this case. On the other hand, it is the contention of the Board of Tax Revision, composed of the Beaver County Commissioners, that in construing the Act of Congress the term real estate must be given its meaning under the Pennsylvania statutes and decisions hereinbefore discussed. The general Attitude of the Courts of the United States to the laws of Particular states was early defined in section 34 of the Federal Judiciary Act of September 24, 1789, c. 20 (28 U. S. C. A. 275), which reads as follows:

"The laws of the several states, except where the constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

The policy of the Federal Courts with reference to the adoption of the law of the several states in their decisions, is illustrated by a great many cases. We call attention to a few of them which seem to us of most significance with reference to the particular question we have before us:

In the case of Edward Hines Yellow Pines Trustees v. Martin, 268 U. S. 458, 45 S. C. R. 543, the question presented was that of the title to certain real estate in the State of Mississippi. The Supreme Court of the United States accepted the general
135 rules as to real estate of the State of Mississippi. In the course of the opinion by Mr. Justice Stone, the Court said:

"An answer to these questions involved an interpretation of the state statute and the application of it, as interpreted, as a rule of property determinative of rights in titles to land within the state. Both the meaning of statutes of a state and the rules of the unwritten law of a state affecting property within the state are peculiarly questions of local law to be ascertained and established by the state courts. For that reason federal courts ordinarily hold themselves bound by the state courts."

* * * * * *

When questions affected by the interpretation of a state statute or a local rule of property arise in a federal court, that court has the same authority and duty to decide them as it has to decide any other questions which arise in a cause, and where state decisions are in conflict or do not clearly establish what the local law is, the federal court may exercise an independent judgment and determine the law of the case. * * * But where the

rule is one affecting title to real estate within the state and has been repeatedly determined by decisions of state courts so that it is established as the law of the state, there has been no departure from the rule that the federal courts will follow the de-
136 cisions of the state courts * * * To avoid the uncertainty and injustice which result from the discordant elements of a substantial right which is protected in one set of courts and denied in the other, with no superior to decide which is right' (Brine v. Insurance Co., 96 U. S. 627, 24 L. Ed. 858), this court has not hesitated, when there has been a conflict of decision between it and the state courts affecting a rule of property within the state, to overrule its own decisions and to follow the state decisions once it has become evident that they have established a 'rule of property' as the settled law of the state."

In the case of W. T. Waggoner Estate, 273 U. S. 113; 47 S. C. R. 271, the question arose out of the taxation of certain oil interests in Wichita County, Texas. The immediate question was whether the interests should be held to be real estate or personal estate. The Court said, in the course of its opinion:

"Whether realty or personality is a question of local law upon which the local decisions and statutes control. Edward Hines, Trustees v. Martin, 268 U. S. 458, 462, 45 S. Ct. 543, 69 L. Ed. 1050. Under article 7510, Complete Tex. Stat. 1920, all real estate is taxable in the county where located."

In the case of Kuhn v. Fairmont Coal Co., 215 U. S. 349; 54 Law. Ed. 228, the subject matter in controversy was
137 certain rights growing out of the ownership of real estate in the State of West Virginia. The immediate question was that of the right of the surface owner to the support of his surface as against the owner of underlying minerals upon the removal thereof. It seems that the law of the State of West Virginia had been determined in a decision rendered by its Appellate Court subsequent to the contract and alleged breach thereof which were the basis of the action. The Supreme Court of the United States undertook to decide the questions involved without being controlled by the decision of the State Court. The ground for its action, as stated, was that while there was a decision of the State court, it was so recent that it could not be said a rule of property had been established in the State at the time of the entering into said contract and the alleged breach thereof. In discussing the question involved the Supreme Court, in the opinion by Justice Harlan, said, among other things:

"In Bucher v. Cheshire R. Co., 125 U. S. 555, 31 L. ed. 795, 8 Sup. Ct. Rep. 974, Mr. Justice Miller, speaking for the court observed: 'it may be said generally that wherever the decisions of the state courts relate to some law of a local character, which

may have become established by those courts, or has always been a part of the law of the state, that the decisions upon the subject are usually conclusive and always entitled to the highest
138 respect of the Federal court. The whole of this subject has recently been very ably reviewed in the case of Burgess v. Seligman, 107 U. S. 20, 27 L. ed. 359, 2 Sup. Ct. Rep. 10. Where such local law or custom has been established by repeated decisions of the highest courts of a state, it becomes also the law governing the courts of the United States sitting in that state.' See also Jackson ex dem St. John v. Chew, 12 Wheat. 153, 6 L. ed. 583.

"Up to the present time these principles have not been modified or disregarded by this court. On the contrary, they have been reaffirmed without substantial qualification in many subsequent cases, some of which are here cited."

* * * * * *

"We take it, then, that it is no longer to be questioned that the Federal courts, in determining cases before them, are to be guided by the following rules: 1. When administering state laws and determining rights accruing under those laws, the jurisdiction of the Federal court is an independent one, not subordinate to, but co-ordinate and concurrent with, the jurisdiction of the state courts. 2. Where, before the rights of the parties accrued, certain rules relating to real estates have been so established by state decisions as to become rules of property and action in the state, those rules are accepted by the Federal court as au-
139 thoritative declarations of the law of the state. 3. But where the law of the state has not been thus settled, it is not only the right, but the duty, of the Federal court to exercise its own judgment, as it also always does when the case before it depends upon the doctrines of commercial law and general jurisprudence. 4. So, when contracts and transactions are entered into and rights have accrued under a particular state of the local decisions, or when there has been no decision by the state court on the particular question involved then the Federal courts properly claim the right to give effect to their own judgment as to what is the law of the state applicable to the case, even where a different view has been expressed by the state court after the rights of parties accrued. But even in such cases, for the sake of comity and to avoid confusion, the Federal court should always lean to an agreement with the state court if the question is balanced with doubt."

One of the most significant cases relating to this question is the comparatively recent case of Erie Railroad v. Tompkins, 304 U. S. 64; 58 S. C. R. 817. This case arose out of the per-

sonal injuries sustained by Tompkins by the alleged negligence of the Railroad Company. The accident happened in Pennsylvania. It seems that he was walking along a beaten footpath which ran for a short distance alongside the tracks of the railroad; and while so walking was struck by some-
140 thing which looked like a door projecting from one of the moving cars. The action was brought in the Federal Court for the Southern District of New York. The Railroad Company contended that the case should be tried in accordance with the Pennsylvania rule; that the duty which it owed to the plaintiff was only that owed to a tresspasser. The trial court rejected this position, and the case reached the Supreme Court of the United States on appeal. This Court reversed the trial court, holding that the Pennsylvania rule should have been applied. The opinion of the Supreme Court was by Justice Brandies, and is instructive in its review of the Federal decisions relating to the adoption of state rules of law by the Federal Courts. The earlier case of Swift v. Tyson was reversed. Justice Brandies quotes the following language of Mr. Justice Story in the earlier case:

"'the true interpretation of the 34th section limited its application to state laws, strictly local, that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovaable and intra territorial in their nature and character.'"

Further discussing the question, Justice Brandies said:

"But it was the more recent research of a competent
141 scholar, who examined the original document, which established that the construction given to it by the Court was erroneous; and that the purpose of the section was merely to make certain that, in all matters except those in which some federal law is controlling, the federal courts exercising jurisdiction in diversity of citizenship cases would apply as their rules of decision the law of the state, unwritten as well as written."

Justice Brandies further states the rule at this time adopted by the Supreme Court of the United States as follows:

"Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has not power to declare substantive rules of common law applicable in a state whether

they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts."

In this connection he quotes, with approval, from the dissenting opinion of Justice Holmes in the case of Kuhn v. Fairmont Coal Company, above referred to, as follows:

142 "The fallacy underlying the rule declared in Swift v. Tyson is made clear by Mr. Justice Holmes. The doctrine rests upon the assumption that there is a 'transcendental body of law outside of any particular State but obligatory within it unless and until changed by statute,' that federal courts have the power to use their judgment as to what the rules of common law are; and that in the federal courts 'the parties are entitled to an independent judgment on matters of general law':

"'But law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else. * * *

"'The authority and only authority is the State, and if that be so, the voice adopted by the State as its own (whether it be of its Legislature or of its Supreme Court) should utter the last word.'"

It is true that the Tompkins case was an action of trespass to recover for injuries sustained and alleged to have been caused by the negligence of the defendant railroad. Indirectly, however, the question passed upon may be said to have the

143 aspect of dealing with a rule of real property, namely, the relation of one walking upon the right of way of a railroad company to that company as a trespasser, or otherwise.

In the case of Dayton & Michigan Railroad Co. v. Commissioner of Internal Revenue, 112 Fed. (2d) 627, the question involved is thus stated in the first paragraph of the opinion:

"This is a petition to review a decision of the Board of Tax Appeals. The sole question involved is whether payments of guaranteed dividends on preferred stock of petitioner are deductible as interest paid on indebtedness within the meaning of Sec. 23 (b) of the Revenue Act of 1934, 48 Stat. 680, 26 U. S. C. A. Int. Rev. Code, Sec. 23 (b). These guaranteed dividends were paid by the Baltimore and Ohio Railroad Company, as assignee of the lessee of the properties of petitioner, direct to the stockholders. There is no question but that such payments constituted income to the petitioner, the question being whether, as they were made in discharge of an obligation of petitioner, petitioner was entitled to a deduction in the amount of the payments

on the theory that they constituted in reality interest on an indebtedness and not dividends on stock."

In this case it was held that the Federal Court should follow, in determining the question involved, the decisions of the
144 appellate court of the State of Ohio. In the opinion of the Circuit Court, by Parker, the law is thus stated:

"It is argued for the petitioner that the Supreme Court of Ohio did not correctly construe the act of 1870 or correctly determine the rights of preferred stockholders under the mortgage executed pursuant thereto. It was well settled, however, even before Erie R. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487, that decisions of the highest court of a state as to the interpretation to be placed upon one of its statutes were binding upon the federal courts. 14 A. J. 313; Lindsey v. Washington, 301 U. S. 397, 400, 57 S. Ct. 797, 81 L. Ed. 1182; Midland Realty Co. v. Kansas City Power & Light Co., 300 U. S. 109, 113, 57 S. Ct. 345, 81 L. Ed. 540. And it was equally well settled that we were bound by state decisions as to rights of property and other matters of local law. Tyler v. United States, 281 U. S. 497, 501, 50 S. Ct. 356, 74 L. Ed. 991, 69 A. L. R. 758; Warburton v. White, 176 U. S. 484, 496, 20 S. Ct. 404, 44 L. Ed. 553. Since the decision in Erie R. Co. v. Tompkins, supra, there can be no question whatever as to our duty to accept the decision of the Ohio court as determinative of the rights of the parties under contracts made, stock issued and mortgages executed within that state. It is true that in interpreting the meaning of a federal statute we are not
145 bound by state decisions; but where rights under state laws become material to the application of federal statutes, we look to the decisions of the states where those rights arise to determine what they are. As said by this court in Leser v. Burnet, 4 Cir., 46 F. 2d 656, 760; "While we look to the federal decisions, and in the absence of such decisions, to the general law, in interpreting the act of Congress, we look to the law of Maryland as laid down by its courts to determine the effect of conveyances executed within that state and relating to property there situate.'"

Numerous other cases might be cited and discussed, but we are satisfied that those already referred to sufficiently establish the rule of law which we think is applicable in the present case. We think there is no question that Congress could, by statute, exempt from state and local taxation all the property, real and personal, of such a federal agency as the Defense Plant Corporation. As a matter of fact, it did not undertake to do this. It left subject to such taxation the real estate of such corporation; and, therefore, left for determination the question as to what is

embraced within said term real estate. The statute does not attempt any specific definition of real estate. The question is necessarily left for determination by the courts; and the question is as to where the true and applicable definition
146 is to be found. We are satisfied that it must be found in the law of the state in which the Federal statute is sought to be applied.

It is true that in most of the cases we have considered, and in most of those decided, the question has been as to the course to be followed by the Federal court in interpreting state statutes and state decisions. In the present case we are undertaking to interpret a Federal statute. As suggested in the last case above quoted, the question is not merely that of an interpretation of the Federal statute generally, but of its interpretation and application to a state of facts and law existing within the State of Pennsylvania. This, we are satisfied, involves a question of purely local law. Nothing has a more definite or inescapable local habitation than real estate. With reference to real estate and the taxation thereof there are rules of property established in Pennsylvania by decision and statute for over one hundred years. These have become rules of property.

It was argued by counsel for the Defense Plant Corporation that Congress showed an intention not to be bound by local statutes or decisions as to real estate by reason of the following language at the close of the quotation hereinbefore made from the Act of Congress, "but such exemptions shall not be construed to be applicable in any state to any buildings which are considered by the laws of such State to be personal property for taxation purposes." The argument does not, however, seem
147 to us to be persuasive. It seems to us that Congress, rather, says, "In this one respect we modify the law of certain states as to what constitutes real estate, but in all other respects we leave it unchanged."

It was also argued that to permit the law of the state to determine the character of the property taxed, as to whether real or personal, would prevent uniformity in the application of the Federal legislation. It is to be observed, however, that the Federal enterprises carried on by the Federal agencies, such as Defense Plant Corporation, are necessarily more or less temporary in character. They are undertaken to meet the emergencies raised by the state of war. It is reasonable to assume that to a large extent they will be discontinued upon the termination of the emergency. On the other hand, in the states, or at least many of them, rules of property are not only of long standing, but have come to regulate the ordinary and essential affairs of the citizens. They are of constant application. In the absence

of any urgent necessity for setting aside laws of the state, we think it sound policy to continue to treat those rules as the basis of decision not only by the state, but by the Federal courts. The contrary policy would probably deserve the criticism which Mr. Justice Brandies, in the Tompkins case, passed upon the policy established by the early case of Swift v. Tyson, and succeeding decisions, namely, that "In attempting to promote uni-
148 formity of law throughout the United States, the doctrine had prevented uniformity in the administration of the law of the state."

Our conclusion is, that when the Act of Congress refers to real estate owned by such governmental agencies as Defense Plant Corporation as subject to state and local taxation, it means real estate within the definition of the law of the state in which the statute is sought to be applied; in other words, in the instant case, the law of the State of Pennsylvania.

There is nothing in the record in the present case to indicate that the taxes in question constitute, or will constitute an undue burden upon the Federal Government, or will in any way obstruct, or impair the performance of its constitutional functions. We think, therefore, that the rule stated should be applied in this case.

Order

Now, to wit: June 7, 1944, it is hereby ordered, adjudged and decreed that the appeal of Defense Plant Corporation from the assessment set forth in the findings of fact hereinbefore stated be and the same hereby is dismissed; and that the assessment of said land as made by the assessor and confirmed by the County Commissioners of Beaver County, acting as a Board of Tax Revision in and for said County, be and the same hereby
149 is approved; the costs of this proceeding to be paid by Defense Plant Corporation.

By the Court:

FRANK E. READER, *P. J.*

Same day, an exception is granted and bill sealed to Defense Plant Corporation.

[SEAL] FRANK E. READER, *P. J.*

In Court of Common Pleas of Beaver County

Order

Filed June 26, 1944

And now, June 26, 1944, it having been brought to the attention of the Court that a question has arisen if the order of June

7th heretofore entered was a final order in view of the fact that it was signed, Frank E. Reader, P. J., and it having been the intention of the Court that the order of June 7th be the final order, on motion of Reed and Ewing, Attorneys for Defense Plant Corporation, the order of Judge Reader of June 7th, as follows:

"ORDER.

"Now, to wit: June 7, 1944, it is hereby ordered, adjudged and decreed that the appeal of Defense Plant Corporation from the assessment set forth in the findings of fact hereinbefore stated be and the same hereby is dismissed; and that the assess-
150 ment of said land as made by the assessor and confirmed by the County Commissioners of Beaver County, acting as a Board of Tax Revision in and for said County, be and the same is hereby approved; the costs of this proceeding to be paid by Defense Plant Corporation.

By the Court:

FRANK E. READER, *P. J.*"

is reaffirmed as the order of the Court en banc.

FRANK E. READER, *P. J.*
HENRY H. WILSON, *Judge.*

Same day, an exception is granted and bill sealed to Defense Plant Corporation.

FRANK E. READER, [SEAL]
HENRY H. WILSON, *Judge.*

In Court of Common Pleas of Beaver County

General statement of questions to be argued on appeal, and, evidence to be omitted from record;

Filed July 22, 1944

The questions to be argued on the appeal from the decree of this Court filed in the Supreme Court of Pennsylvania, at No. 201, March Term, 1944, are substantially the following:

1. Under the provisions of the Reconstruction Finance Corporation Act relating to exemption from taxation, 15
151 U. S. C. A. Section 610 ... machinery and equipment of Defense Plant Corporation in its plant in Borough Township taxable as real estate by local taxing authorities?

2. Under the provisions of Section 610 of U. S. C. A. Title 15, does "real property" mean real property under the tax laws of the Commonwealth of Pennsylvania, or does it refer to real property as determined by the Federal law?

3. Can a State by statute make real property for tax purposes out of movable machinery and equipment which ordinarily is regarded as personal property?

Appellant proposes to print all of the Record in the Court below except as follows: (1) Pages 30 and 31; (2) Beginning on page 71, "Further Direct Examination", and extending to bottom of page 87; (3) Page 94, beginning in the middle of the page as follows: "THE COURT (Wilson, J.)" and extending to middle of page 99, the conclusion of the testimony.

Consent to the foregoing will be presumed unless objections are made within ten days from the filing of this statement.

HENRY J. CRAWFORD,
HAROLD F. REED,
Attorneys for Defense Plant Corporation.

152 In the Supreme Court of Pennsylvania
Western District

No. 201 March Term, 1944

Docket entries

IN RE: APPEAL OF DEFENSE PLANT CORPORATION FROM ASSESSMENT OF PROPERTY IN THE TOWNSHIP OF BOROUGH, COUNTY OF BEAVER, PENNSYLVANIA

Appeal of Defense Plant Corporation

Appeal From the Order of the Court of Common Pleas of Beaver County at No. 320 June Term, 1943

June 27, 1944, Appeal and Affidavit Filed and Writ Exit

July 3, 1944, Appearance for appellee filed.
September 14, 1944, Assignments filed.
September 21, 1944, Appellant's acceptance of service of brief for County of Allegheny filed under Rule 61.
September 21, 1944, Appellee's acceptance of service of Brief for County of Allegheny filed under Rule 61.
September 25, 1944, Record with testimony attached filed.
September 27, 1944, Argued. 218.
September 28, 1944, the following order filed: Order.
Per Curiam:
September 28, 1944, It is ordered that the above-entitled case shall be reargued before the entire Court on Monday, October 2, 1944. Maxey, C. J.

October 2, 1944, Reargued. 218. Decision.
October 31, 1944. Order affirmed. Linn, J.
November 9, 1944, Petition for reargument filed. Order. Nov. 17, 44.

Per Curiam:
Petition refused.

153 November 17, 1944, Court directed orally that record be held for three months in order that counsel may apply at Washington.

January 26, 1945, Petition for allowance of appeal to the Supreme Court of the United States; Assignments of error; Statement as to Jurisdiction; Acceptance of service, filed.

ORDER ALLOWING APPEAL

Defense Plant Corporation, Appellant in the above-entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the Commonwealth of Pennsylvania on the 31st day of October 1944, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the Statutes and the Rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the Commonwealth of Pennsylvania in the above entitled cause, as provided by law, and that the Clerk of the Supreme Court of the Commonwealth of Pennsylvania shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty days of this date.

It appearing that Appellant is a corporate agency of the United States, its stock being wholly owned, directly or indirectly by the United States, no bond or other security for the prosecution of such appeal or to answer in damages or costs shall be required of Appellant:

GEORGE W. MAXEY,
Chief Justice of the Supreme Court.

Dated Feb. 2, 1945. Court of Pennsylvania.

February 9, 1945, Acceptance of service of copies of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction dated Feb. 6, 1945, filed.

February 9, 1945, Citation of Chief Justice of Supreme Court of Pennsylvania with acceptance of service, filed.

154 February 15, 1945, Statement of points relied upon and designation of portions of the record necessary for consideration thereof, with acceptance of service, filed.

February 19, 1945, Stipulation designating parts of record to be included in the transcript on appeal to Supreme Court of United States, filed.

February 19, 1945, Appellee's statement addressed to the Supreme Court of the United States opposing jurisdiction, and motion to dismiss or affirm, with acceptance of service, filed.

February 19, 1945, Original citation with acceptance of service, authenticated transcript of record and statement of points relied upon delivered to Harold F. Reed, Esq., of counsel for appellant, for transmission to the Supreme Court of the United States.

For Appellant: Sterling Newell, Henry J. Crawford, Harold F. Reed.

For Appellee: John G. Marshall, County Solicitor of Beaver County.

155 In the Supreme Court of Pennsylvania,
Western District

No. 201 March Term, 1944

IN RE: APPEAL OF DEFENSE PLANT CORPORATION FROM ASSESSMENT OF PROPERTY IN THE TOWNSHIP OF BOROUGH, COUNTY OF BEAVER, PENNSYLVANIA

Appeal of Defense Plant Corp.

Assignments of error

Filed Sept. 14, 1944

Defense Plant Corporation, the Appellant in the above case, files the following Assignments of Error:

1. The lower Court erred in entering the following order, which order and the exception thereto are as follows:

"ORDER

"Now to wit June 7, 1944, it is hereby ordered, adjudged, and decreed that the appeal of Defense Plant Corporation from the assessment set forth in the findings of fact hereinbefore stated be and the same hereby is dismissed; and that the assessment of said land as made by the assessor and affirmed by the County

Commissioners of Beaver County, acting as a Board of Tax Revision in and for said County, be and the same is hereby approved; the costs of this proceeding to be paid by Defense Plant Corporation.

By the Court.

FRANK E. READER, *P. J.*"

"Same day, an exception is granted and bill sealed to Defense Plant Corporation.

FRANK E. READER, *P. J.* [SEAL]"

2. The lower Court erred in entering the following order, which order and the exception thereto are as follows:

"ORDER.

Filed June 26, 1944

"And now June 26, 1944, it having been brought to the attention of the Court that a question has arisen if the order of June 7th heretofore entered was a final order in view of the fact that it was signed, Frank E. Reader, P. J., and it having been the intention of the Court that the order of June 7th be the final order, on motion of Reed & Ewing, Attorneys for Defense Plant Corporation, the order of Judge Reader of June 7th as follows:

"'Now to wit June 7, 1944, it is hereby ordered,
156 adjudged, and decreed that the appeal of Defense Plant Corporation from the assessment set forth in the findings of fact hereinbefore stated be and the same hereby is dismissed; and that the assessment of said land as made by the assessor and affirmed by the County Commissioners of Beaver County, acting as a Board of Tax Revision in and for said County, be and the same is hereby approved, the costs of this proceeding to be paid by Defense Plant Corporation.

By the Court.

FRANK E. READER, *P. J.*

is reaffirmed as the order of the Court en banc.

FRANK E. READER, *P. J.*
HENRY H. WILSON, *Judge.*"

"Same day, an exception is granted and bill sealed to Defense Plant Corporation.

FRANK E. READER, [SEAL].
HENRY H. WILSON, *Judge.*"

HENRY J. CRAWFORD,
HAROLD F. REED,
Attorneys for Defense Plant Corporation.

[File endorsement omitted.]

157 In the Supreme Court of Pennsylvania
Western District

No. 201—March Term, 1944

IN RE: APPEAL OF DEFENSE PLANT CORPORATION FROM ASSESSMENT OF PROPERTY IN THE TOWNSHIP OF BOROUGH, COUNTY OF BEAVER, PENNSYLVANIA

Appeal of Defense Plant Corporation

Appeal From the Order of the Court of Common Pleas of Beaver County at No. 320 June Term, 1943

Opinion of the Court

Filed Oct. 31, 1944

LINN, *J.*

The question is, what did Congress mean by the term "real property" in the Act waiving immunity from taxation of certain property owned by government agencies? It is presented by this appeal from the confirmation of a township tax assessment for the triennial period 1942–45. Appellant, Defense Plant Corporation, originally complained of the entire assessment, which itemized land, buildings and machinery; but at the hearing in the court below conceded the power to tax the land and buildings and denied only the power to tax the machinery.[1]

The parties have agreed that the plant-machinery was "necessary and essential to its [appellant's plant's] existence and operation as a manufacturing plant for aircraft propellers."
158 It was held taxable as real estate pursuant to the General County Assessment Law of May 22, 1933, P. L. 853, 72 PS section 5020-101, providing: "Section 201. Subjects of Taxation Enumerated.—The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school, and poor purposes at the annual rate:

"(a) All real estate to wit; Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces,

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[1] The assessment was itemized:

Nine (9) Acres improved, assessed at $100 per acre	$9,900.00
Twenty four (24) acres, not improved, assessed at $1000 per acre	24,000.00
Plant building and cafeteria assessed at	338,000.00
Administration Building, assessed at	32,000.00
Boiler House, assessed at	60,000.00
Personnel Building, assessed at	5,000.00
Machinery, assessed at	388,000.00
Total	856,900.00

forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by law from taxation."

It has long been the rule in Pennsylvania that "Whether fast or loose, therefore, all the machinery of a manufactory which is necessary to constitute it, and without which it would not be a *manufactory at* all, must pass for a part of the freehold" (Voorhis v. Freeman,[2] 2 W. & S. 116, 119 (1841)). This rule prevails in the majority of the states in which the subject has been considered by the courts, as the cases cited later, show. Appellant's machinery, being an integrated part of the manufactory, and so, of the freehold, was therefore taxable, as other real property in the township was taxable unless the Congressional immunity did not apply.

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The Act[3] provides: "Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except as provided in section 742a (a) of Title 31. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The exemptions provided for in the preceding sentence, with respect to taxation (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) shall be construed to be applicable not only with respect to the Reconstruction Finance Corporation but also with respect to (1) the Defense Plant Corporation, the Defense Supplies Corporation, the Metals Reserve Company, the Rubber Reserve Company, and any other corporation heretofore or hereafter organized or created by the Reconstruction Finance Corporation under section 606b of this title, as amended, to aid the Government of the United States in its national-defense program, (2) the RFC Mortgage Company, the Federal National

[2] See also, Patterson v. Delaware Company, 70 Pa. 381; Titus v. Boland Coal Company, 275 Pa. 421, 119 A. 540; Commonwealth Trust Company of Pittsburgh v. Harkins, 312 Pa. 402, 167 A. 278; Pennsylvania Chocolate Company v. Hershey Brothers, 316 Pa. 292, 175 A. 694; Central Lithograph Company v. Eatmor Chocolate Co., 316 Pa. 390, 175 A. 697; Ross v. Fairy Silk Mills, 334 Pa. 305, 5 A. 2d 569; McClure v. Atlantic Rock Company, Inc., 339 Pa. 296, 14 A. 2d 124.

[3] Approved June 10, 1941, c. 190, sec. 3, 55 Stat. 248, 15 USCA section 610, amending Act of January 22, 1932, c. 8, sec. 10, 47 Stat. 9.

Mortgage Association, and any other public corporation heretofore or hereafter organized by or at the instance of the Reconstruction Finance Corporation, and (3) the Disaster Loan
160 Corporation, and any other public corporation which is now or which may be hereafter wholly financed and wholly managed by the Reconstruction Finance Corporation. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by any corporation referred to in clause (1), (2), or (3) of the preceding sentence, but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

Our special concern is with the provisions "* * * except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed * * *. Such exemptions shall also be construed to be applicable to * * * personal property owned by * * * [Defense Plant Corporation] * * * but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for taxation purposes."

What did Congress intend by the term "real property" in the statute which was designed to waive immunity in aid of the revenues of local communities in which industrial establishments were engaged in manufacturing defense material? Did it intend "real property" to include the entire "mill or manufactory" (as provided by local law) or only the land and vacant buildings without the mechanical part of the plant?

Two suggestions are made by the parties for determining the intended content of the term real property. The appellant says: "We submit that the primary, universally accepted meaning of 'real property' is, as indicated in the foregoing quotations,[4]
161 land together with such tangible items, generally chattel in nature, as have by intention of the interested parties and by their permanent manner of attachment to the land become incorporated into the land, that is, buildings and fixtures."

We think there is such ambiguity and uncertainty in that statement, that we must reject it on the ground that it does not represent the majority view. Our examination of the decisions dealing with the actual and constructive attachment of machinery to the freehold throughout the states, shows that in a major-

[4] The quotations are from 1 Tiffany, Real Property (3d ed. 1939), sections 3 and 10; 52 C. J. p. 1156; In re Inglis, 69 Okla. 64, 169 Pac. 1083.

162 ity[5] of the states, the attachment to the land may be construc-
tive[6] and need not be physical to the extent that removal will result in serious damage to the remaining freehold. In Ohio, for example, only "slight"[7] attachment is required. The evidence in the record shows that some of the machinery in appellant's plant is easily removable; some is bolted to foundations; "hoists, the monorail, or crane runway" appear to be built in and supported by the structural part of the building. For some states, no decisions were found. In some states, statutes provide that certain classes of machinery shall be assessed as real property.[8]

On the other hand, the appellee submits that, in abolishing immunity and conferring the local power of taxation, Congress must have intended the content of the term real property to be determined by the law of the taxing district. In the condemnation proceeding, U. S. ex rel. T. V. A. v. Powelson, 319 U. S. 266, 63 Sup. Ct. 1047, 1054, the court said at page 279, "Though the meaning of 'property' as used in § 25 of the Act and in the Fifth
Amendment is a federal question, it will normally obtain
163 its content by reference to the local law." The rule was applied in U. S. v. Bechtold Co., 129 F. 2d 473 (C. C. A. 8th, 1942) and in U. S. v. 19.86 Acres of Land, 141 F. 2d 344 (C. C. A. 7th, 1944), similar cases being referred to in the opinions.

Against the adoption of the local definition of real estate, the appellant refers to several cases: Carpenter v. Shaw, 280 U. S. 363, 50 Sup. Ct. 121; Lyeth v. Hoey, Collector, 305 U. S. 188, 59 Sup. Ct. 155; and Morgan v. Commissioner, 309 U. S. 78, 60

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[5] The majority referred to includes the following: Humes v. Higman, 145 Ala. 215, 40 So. 128; Southern Cotton Oil Co. v. Lowery, 231 Ala. 119, 163 So. 629; Fechet v. Drake, 2 Ariz. 230, 12 Pac. 694; Teater v. Good Hope Development Corp., 86 P. 2d 673 (Cal.); Cary Hardware Co. v. McCarty, 10 Colo. App. 200, 50 Pac. 744; Atlantic Refining Co. v. Feinberg, 31 Del. 183, 112 A. 685; Commercial Fin. Co. v. Brooksville Hotel Co., 98 Fla. 419, 123 So. 814; Seedhouse v. Broward, 34 Fla. 509, 16 So. 325; Cunningham v. Cureton, 96 Geo. 489, 23 S. E. 420; J. & H. Day Co. v. Public Sav. Ins. Co., 85 Ind. App. 78, 151 N. E. 361; Ottumwa Woolen Mills Co. v. Hawley, 44 Iowa 57; Green v. Chicago, R. I. & P. R. R., 8 Kan. 617; Parsons v. Copeland, 38 Me. 537; Dudley v. Hurst, 67 Md. 44, 8 A. 901; Anderson v. Perpetual B. & L. Ass'n, 190 A. 747 (Maryland); Southbridge Sav. Bank v. Mason, 167 Mass. 500, 18 N. E. 406; Commercial Credit Corp. v. Com'th Mtge. etc., 276 Mass. 335; Lyle v. Pain, 42 Mich. 314, 3 N. W. 921; Detroit Trust Co. v. Detroit City Service Co., 262 Mich. 14, 247 N. W. 76; Merchants National Bank v. Stanton, 55 Minn. 211, 218; Planters Mfg. Co. v. Greenwood Agency, 168 Miss. 892, 152 So. 476; Knickerbocker Trust Co. v. Penn Cordage Co., 66 N. J. Eq. 305, 58 A. 409; McRea v. Central Nat. Bk., 66 N. Y. 489; Foote v. Gooch, 96 N. C. 265, 1 S. E. 525; Metropolitan Life Ins. Co. v. Kimball, 94 P. 2d 1101 (Oregon); Pennsylvania cases are cited above; Metropolitan Life Ins. Co. v. Jensen, 9 N. W. 2d. 140 (South Dakota); Danville Holding Corp. v. Clement, 178 Va. 223, 16 S. E. 2d 345; Pocahontas Coal & Coke Co. v. By Products Pocahontas Co., 112 W. Va. 390, 164 S. E. 504; Thomsen, v. Carlen, 196 Wis. 581, 219 N. W. 439.

[6] An interesting discussion of this subject by the Court of Appeal appears in Tyne Boiler Works Co. v. Overseers, L. R. 18 C. B. D. 81 (1887).

[7] Holland Furnace Co. v. Trumbull Sav. & Loan Co., 135 Ohio St. 48, 52 (1939). In this case the court said: "While, to make a chattel a fixture, there must be physical annexation of the chattel to the realty, the annexation may be very slight. * * *"

[8] Vermont, Pub. L. (1933) sec. 586; Utah, Code Ann. (1943) 80-3-1; Kansas, Gen. Stat. (Corrick 1935) sec. 79-102; Rhode Island, Gen. Laws (1938) c. 30, section 3.

Sup. Ct. 424. In the Carpenter case it was necessary to determine what Congress meant by the word "lands" in the Act ratifying the Atoka Agreement with certain Indian tribes then in Oklahoma Territory. The Act provided "* * * the lands allotted shall be non-taxable while the title remains in the original allottees." The question was whether oil royalty reserved by allottee-lessors was exempt or was taxable as personal property by the State of Oklahoma and the royalty was held nontaxable. The Lyeth and the Morgan cases involved the construction of the Federal Revenue Act, in one case the meaning of the word "inheritance" and in the other, the meaning of the term "general power of appointment." It was held that national uniformity in the collection of income and inheritance taxes required the application of the generally understood meaning of "inheritance" and of "general power of appointment," unaffected by local variations from the generally understood meaning of the words. National Labor Relations Board v. Hearst Publications, Inc., 322 U. S. 111, determining what Congress meant by the word "employes" in the Wagner Act, was also referred to. It was held that as the Act was "administered by a national agency, intended to solve a national problem on a national scale," local definitions of the word must be rejected. Those cases, and others which might be added, illustrate the application of the principle of federal supremacy, a principle not challenged by the appellee. Its submission is that when Congress conferred the power of "local taxation [of real property] to the same extent according to its value as other real property is taxed" without defin-
164 ing real property in the Act, it necessarily intended that all the property within the taxing district considered to be real property, should be taxable; that if this construction were rejected, the machinery constituting part of appellant's plan would be exempt while like machinery of a private individual would be taxed; that one purpose of the Act was to remove such discrimination as had formerly existed, in order that tax burdens might be more equitably distributed.

The brief filed on behalf of Allegheny County states that "The amending Act of 1941 originated in the Senate as S. 1438 of the 77th Congress, 1st Session. Section 3 of the bill amends section 10 of the original Act. In commenting on the existing law (i. e., the provisions of Section 10 of the original Act), the report of the Committee on Banking and Currency (S. Rep. No. 292), submitted through Senator Brown, contains the following relevant sentence: 'The only qualification of these exemptions provides that real property of the Corporation is to be subject to nondiscriminatory State and local taxes.'" In the brief of the appellant it is said that Pennsylvania furnishes an "example of

tax diversity." Different taxing districts may have different rates of assessment or none at all; such diversity is not prohibited; what the law prohibits is discrimination within the boundaries of the taxing district. The Constitution of Pennsylvania allows classifications of municipalities, counties, townships, etc., and classification has been made pursuant to that power. For cities of the first class, for example, the law provides that in the "* * * assessment of real estate for taxation, the machinery and tools used in manufacturing in any mill or manufactory shall not be considered or included in determining the value of real estate." Act of June 3, 1915, P. L. 787, 53 PS section 4742. In cities of the second class such property is not taxable for city or school purposes: Act of March 7, 1901, P. L. 20, Art. XIX, section 3, cl. 1, amended by the Act of May 12, 1911, P. L. 287, section 1, 53 PS section 9634. But the mere fact that in some taxing districts certain property is taxable and in others
165 is exempt, is of no consequence in this review because appellant does not contend that there was discrimination against its property in the taxing township. For the same reason it would seem to be immaterial if in some states it may be found unnecessary to raise revenue by taxing such property.

There is difficulty in ascertaining with certainty what Congress meant by the words real property in the statute. There is no federal general common law [9] to which we can turn for aid. In 36 Words and Phrases, p. 221, many varying definitions of real property are given. Dictionaries define it as land, real estate, realty, and the like. Any adequate definition must take account of the doctrines of fixtures and of equitable conversion. We understand appellant's position to be that Congress intended that the content of the term real property should be the view prevailing in the majority of the states that have dealt with the subject of chattels made part of the freehold. The cases cited above in note 5 show that the majority view is contrary to that suggested as the standard. If appellant is correct in suggesting that the Congressional meaning is to be found in the prevailing view among the states, we must hold that the machinery was properly included in the assessment of real estate and entitled to the waiver of federal immunity. If, on the other hand, we accept the appellee's submission that Congress intended that the content of the term real property should be found in the law of the assessing district, the machinery was properly included in the assessment. In either view, we all agree the appeal fails.

Order affirmed.

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[9] Erie R. Co. v. Tompkins, 304 U. S. 64, 78, 58 Sup. Ct. 817, 822.

166 In Supreme Court of Pennsylvania

Appellant's petition for reargument

Filed Nov. 9, 1944

Defense Plant Corporation, appellant herein, respectfully prays this Honorable Court to grant a reargument in the above appeal, to reconsider the conclusions reached in its opinion filed October 31, 1944, and reverse that decision, and specify herein the points overlooked or misapprehended by the Court, the reason for rehearing and the argument in favor thereof. Your petitioner desires a reargument on the following points:

1. Where the Act of Congress of June 10, 1941, U. S. C., Title 15, Section 610, provides that personal property of Defense Plant Corporation is exempt from local taxation, but that real property may be taxed to the same extent that other real property is taxed, may a State, by considering machinery and other purely personal items, used in the operation of a plant, as real property for local tax purposes, nullify the immunity of personal property?

2. Whether, if the Pennsylvania Act of May 22, 1933, P. L. 853, Section 201, 72 Purd. Stat. 502-201, authorizes the assessment of machinery and other personal items belonging to Defense Plant Corporation, an agency of the United States of America, whose personal property has been declared immune from local taxation by the Act of Congress of June 10, 1941 U. S. C., Title 15, Section 610, it is invalid as being repugnant to the Constitution and Laws of the United States.

REASONS FOR REHEARING

1. The basis of this Court's decision is:

(a) That it is uncertain what Congress intended by the meaning of the words "real property" and that as a majority of the States consider a slight annexation of machinery to the freehold to constitute real property, that the machinery and other personal items of Defense Plant Corporation in the plant in Borough Township, for the purposes of taxation in Pennsylvania became real estate.

(b) The concept that the content of the term "real property" as used in the Federal Statute should be found in the law of the assessing district.

2. This Court's opinion is based on a ground that was not briefed or argued orally, namely that in the majority of the States; machinery whether fast or lose, is a part of the real
167 estate when located in a manufactory. Appellant believes that such is not the law in the majority of the States.

3. In reaching its decision this Court gave no consideration to what was intended by Congress in specifically preserving the immunity of personal property from taxation.

4. This Court misapprehended the nature and status of Defense Plant Corporation, and erroneously differentiated it from agencies administered on a national basis.

5. This Court gave no consideration to the discrimination resulting between the several states, holding that the local Pennsylvania rule of taxation should govern the intent of Congress nor to the need for uniformity throughout the United States in interpreting the Act of Congress, although the Act is national in scope, and is administered by a national agency in the most vital national interest.

ARGUMENT

1. The Act of Congress of June 16, 1941, c. 190, sec. 2, 55 Stat. 248, 15 U. S. C., Sec. 610, provides in part as follows:

"* * * The corporation, including its franchise, its capital, reserves, and surplus; and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The exemptions provided for in the preceding sentence, with respect to taxation (which shall, for all purposes, be deemed to include sales, use, storage, and purchase taxes) shall be construed to be applicable not only with respect to the Reconstruction Finance Corporation but also with respect to (1) the Defense Plant Corporation, * * *. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by any corporation referred to in Clause (1), (2), or (3) of the preceding sentence, but such exemptions shall not be construed to be applicable in any State to any buildings which are considered 168 by the laws of such State to be personal property for taxation purposes."

The Court based its decision in part on the ground that machinery of Defense Plant Corporation constituted a fixture under the law of Pennsylvania. This is contrary both to the testimony in the case (R-62a-68a, 71a-75a) and the Trial Court's Finding of Fact (R-110a). The facts as found by the lower Court show that no question of fixtures was involved in this case. In order to constitute a fixture, there must be some annexation to real estate and the parties must intend that the chattels shall be

come part of the real estate. In this case, Curtiss-Wright Corporation and Defense Plant Corporation expressly agreed that machinery shall remain personalty, notwithstanding the fact that it may be affixed or attached to the realty. (R. 27a.) That there was no sufficient annexation is clearly shown in Appellant's Brief, p. 37.

Time has not permitted the examination of all of the cases cited by this Court as authority that the Pennsylvania rule is applied in a majority of the States. However, it is submitted that by statute or decision in the vast majority of states, machinery of the type in question is not taxable as real property. Ohio, for example, is one of the states mentioned. Yet it clearly appears in that state that such property is no part of the real estate. Indeed, the Ohio State Board of Tax Appeals has recently ruled that rolling mill equipment in a steel plant, weighing almost 2,000,000 pounds is not taxable as part of the real property (Republic Steel Corporation v. Board of Revision, No. 6226, decided June 23, 1944, appeal now pending in the Ohio Supreme Court)

This Court also refers to a "slight" attachment to real property, whereas the majority of the property here involved was not attached in any way (Record p. 63a). With respect to "the hoist, the monorail or crane runway" referred to by the Court (Opinion, p. 218–6) the testimony is that they were not considered machinery (Record p. 67a) and they were not included in the list of machinery assessed (Record, pp. 97a–101a).

2. This Court also based its decision on the ground that the meaning of the term "real property" should be determined by applying the law of the taxing district. It is submitted that there is nothing in the Federal Act or the surrounding
169 circumstances permitting such an interpretation. When Congress legislates, it is presumed to legislate nationally, and the Federal rule rather than any State rule obtains in the absence of a clear indication to the contrary in the Act (Jerome v. United States, 318 U. S. 101–4). That there is no such clear indication in Section 10 of the Reconstruction Finance Corporation Act is born out by this Court's statement in its opinion on page 218–9: "There is difficulty in ascertaining with certainty what Congress meant by the words 'real property' in the Statute."

As set forth in Appellant's brief, pages 15 to 22, an Act such as the Reconstruction Finance Corporation Act must be interpreted on a national basis and not on a local basis. The only thing local about the Act is its administration in a specific locality. There is nothing in the Act itself to indicate the subject matter is local. Both the extent and the subject matter of the immunity must be determined by the intent of Congress

when it used the words "real property" and "personal proper
Garret v. Moore-McCormick Co., 317 U. S. 239 (1942).

In construing the Act of Congress, words should be giv
their usual and ordinary meaning. (Federal Housing Admin
trator v. Burr, 309 U. S. 242-246). If the Courts are bound
adopt the local rule, then because of a peculiar and technical r
of law in force in this State and some other States, the proper
which is admittedly personal may be taxed as real estate, and t
provision of a Federal Act specifically exempting person
property from taxation completely nullified, as set forth on pa
32 of Appellant's brief:

"For if States by mere definition have the power to elimina
all distinctions between real and personal property belonging t
these corporations and thereby to tax all items of property
real property, then the Federal Constitution and the Act
Congress exempting personal property from State taxation b
come merely a shadow without meaning, and the States thereb
assume jurisdiction over property of the United States in defianc
of Congress and in contravention of the Constitution."

It is respectfully submitted that there is Federal Commo
Law which is applicable to the present cause. In the case o
D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp.
170 315 U. S. 447-472, Justice Jackson said:

"Federal law is no juridical chameleon, changing com
plexion to match that of each state wherein lawsuits happen to
be commenced because of the accidents of service of process and
of the application of the venue statutes. It is found in the fed
eral Constitution, statutes, or common law. Federal common law
implements the federal Constitution and statutes, and is condi
tioned by them. Within these limits, federal courts are free to
apply the traditional common-law technique of decision and to
draw upon all the sources of the common law in cases such as
the present. (Board of Commissioners v. United States, 308
U. S. 343, 350)."

3. Apparently, this Court gave no consideration to that por
tion of the Act of Congress which specifically grants immunity
to personal property from taxation. If Congress intended to
permit any State to levy a tax upon personal property of De
fense Plant Corporation merely by calling such personal prop
erty real estate, would it have expressly declared that personal
property was immune from local taxation? In the past, Con
gress has frequently removed real estate from the tax exemption
granted to Federal Agencies, but only in this Act in question has
Congress specifically banned local taxation of personal property.
The intent of Congress in this respect is clearly shown in Ap
pellant's brief, pp. 24-31.

4. This Court in its opinion, misapprehended the nature and status of Defense Plant Corporation, and attempted to differentiate it from other agencies of the Federal Government administered on a national basis. In its opinion, the Court makes the following statements: "National Labor Relations Board v. Hearst Publications, Inc., 322 U. S. 111, determining what Congress meant by the word 'employees' in the Wagner Act, was also referred to. It was held that as the Act was 'administered by a national agency maintained to solve a national problem on a national scale,' legal definitions of a word must be rejected." Can anyone say that Defense Plant Corporation is not "a national agency maintained to solve a national problem on a national scale?" Obviously not. Defense Plant Corpora-
171 tion is operated as a nation-wide organization. It was created to carry out the power of this Nation to make war. No Federal agency could have any purpose more vital to the national welfare or more national in its scope. It was created in the interest of all the people and if it is to function properly should be administered on a uniform basis throughout the Nation.

This Court refers to the following cases: Carpenter v. Shaw, 280 U. S. 363; Lyeth v. Hoey, 305 U. S. 188; Morgan v. Commissioners, 309 U. S. 78; NLRB v. Hearst, 322 U. S. 111, but it does not attempt to distinguish the situations there involved from that in the instant case. As a matter of fact, the cases cannot be distinguished because in those cases as in this case, there is a nation-wide problem which must be administered on a nation-wide uniform basis. Nowhere in the Court's opinion is there found anything to overcome the presumption of Congressional intent that "real property" is to be given a uniform national meaning (Jerome v. United States, supra).

5. This Court gave no consideration to the discrimination between States which must necessarily result from its decision, nor to the need for uniformity in applying the provisions of an Act which is national in scope, administered by a national agency, in the most vital national interest. In those States where land is subject to a real estate tax, and personal property is subject to a personal propery tax, or is not taxed at all, the Congressional waiver of immunity does not extend to personal property, and such States would be unable to collect any tax on machinery of Defense Plant Corporation. In Pennsylvania, under the holding in this case, machinery of Defense Plant Corporation is changed into real property for the purpose of taxation.

In case of idential plants, one erected in Pennsylvania, and one in an adjoining state such as Ohio, the local taxing district in

Pennsylvania might secure twice as much revenue from the Federal government as the taxing district in such adjoining State.

Failure to adopt a uniform rule for the determination of what is real property, and what is personal property, will result
172 in widespread discrimination against those States which consider machinery in a plant as personal property, and have both a real estate and a personal property tax. The problem is not solved by saying that certain States may not need the additional revenue. Practically every State in the Union taxes machinery but the majority of the States tax it as personal property.

The situation clearly lends itself to discrimination between the States. Congress certainly did not intend any such result. Congress has indicated in the Act itself that it intended a uniform interpretation as to what is real and what is personal. Generally speaking, buildings are considered real property but the Act specifically provides that in those States where a building is considered personality, that the waiver of immunity shall be effective, and such buildings may be taxed by the local authorities. If Defense Plant Corporation is to operate efficiently, it should be administered on a national uniform basis. See Appellant's brief, p. 38-39.

It is submitted with deference that although this Court's opinion states that the question of Federal supremacy was not raised by the Appellee, it is in fact an issue in this case. As stated by the Supreme Court of the United States in Erie Railroad Company v. Tomkins, 304 U. S. 64, at page 78: "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." The instant case comes clearly within the exception stated by Justice Brandeis in the Tomkins case, as stated on page 15, of Appellant's brief:

"We cannot conceive of a situation more clearly within the exception stated by Justice Brandeis, and therefore more clearly outside the rule to which the trial court turned for assistance, than one involving a conflict between an arm of the Federal Government and an arm of the State Government respecting the latter's right, if any, under an act of the Federal Congress, to invade the former's constitutional tax immunity."

It is respectfully submitted that this Court in reaching its decision, overlooked two cardinal rules of statutory construction:

1. That a Act should be construed if possible so as to make it unnecessary to declare it unconstitutional. Since Pennsyl-
173 vania taxes personal property under a doctrine which in certain instances considers personal property as real

estate for the purpose of taxation, a serious question arises of the constitutionality of the Pennsylvania Taxing Act, but if the Pennsylvania Act is construed as taxing only real property in the generally accepted sense; which is the only property permitted to be taxed under the Act of Congress, there is no doubt as to the constitutionality of the Pennsylvania Statute. See Appellant's brief, pp. 33–34, citing and quoting from United States v. City of Springfield.

2. That any act in derogation of sovereignty shall be strictly construed. Freedom from taxation is one of the primary incidents of sovereignty. It follows that the waiver of immunity is in derogation of sovereignty. There is no power in Pennsylvania to tax the property of Defense Plant Corporation except in accordance with the Congressional grant. Consequently, the right to tax must be strictly construed, against Pennsylvania. See Appellant's Brief, pp. 31–33. This is especially applicable in view of this Court's statement that "there is difficulty in ascertaining with certainty what Congress meant by the words 'real property' in the Statute."

For the reasons above, petitioner prays that an order be entered granting a reargument in this cause, and that the judgment entered herein on October 31, 1944, be reversed. If this motion for reargument is denied, petitioner prays that an order be entered directing the Prothonotary of this Court to hold the Record in this case for a period of three months during which your petitioner has the right to file a petition for an allowance of an appeal to the Supreme Court of the United States as provided by law.

STERLING NEWELL,
HENRY J. CRAWFORD,
WILLIAM N. GATES,
HAROLD F. REED,
Attorneys for Defense Plant Corporation.

[File endorsement omitted.]

174 In Supreme Court of Pennsylvania

Order refusing petition for reargument

Nov. 17, 44

Per Curiam:
Petition refused.

175 In the Supreme Court of Pennsylvania,
Western District

[Title omitted.]

Petition for allowance of appeal to the Supreme Court of the United States

Filed Jan. 26, 1945

Defense Plant Corporation, the Appellant above named and Petitioner herein, respectfully states that on October 31, 1944 this Court entered a judgment against it and affirming the order of the Court of Common Pleas of Beaver County; that a motion for reargument was filed on November 9, 1944, and that said motion was denied on November 17, 1944.

Petitioner, believing that the judgment of this Court is incorrect, prays that it may be allowed to appeal to the Supreme Court of the United States for reversal of the judgment of this Court, and that a transcript of the record in this cause, duly authenticated, shall be sent to the Supreme Court of the United States.

Petitioner submits and presents to the Court herewith its statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain an appeal in this cause in compliance with Rule 86 of this Court and Rule 12 of the Supreme Court of the United States.

DEFENSE PLANT CORPORATION,
By STERLING NEWELL,
HENRY J. CRAWFORD,
WM. N. GATES,
SQUIRE, SANDERS & DEMPSEY,
Cleveland, Ohio.
HAROLD F. REED,
REED & EWING,
56½ Third Street, Beaver, Pennsylvania,
By HAROLD F. REED.

[File endorsement omitted.]

176 In the Supreme Court of Pennsylvania,
Western District

[Title omitted.]

Assignment of errors

Filed Jan. 26, 1945

The Court erred:

1. In holding that the Act of May 22, 1933, P. L. 853, Art. II, including Section 201 thereof, as amended, is constitutional in so

far as it purports to authorize the assessment for taxation of machinery owned by Defense Plant Corporation.

2. In holding that the assessment for taxation, as part of the real estate, of machinery owned by Defense Plant Corporation and used in the operation of an industrial plant owned by said Corporation is not repugnant to the Constitution and Laws of the United States.

3. In holding that the Act of Congress approved June 10, 1941, c. 190, Section 3, 55 Stat. 248 (U. S. C. Title 15, Section 610) was to be construed as waiving with respect to machinery owned by Defense Plant Corporation the constitutional immunity otherwise enjoyed by such Agency from state and local taxes.

4. In affirming the order of the Court of Common Pleas of Beaver County, which order confirmed the assessment of machinery owned by Defense Plant Corporation.

DEFENSE PLANT CORPORATION,
By, STERLING NEWELL,
HENRY J. CRAWFORD,
WM. N. GATES,
SQUIRE, SANDERS & DEMPSEY,
Cleveland, Ohio.
HAROLD F. REED,
REED & EWING,
564 Third Street, Beaver Pennsylvania,
By HAROLD F. REED.

[File endorsement omitted.]

177 In the Supreme Court of Pennsylvania,
Western District

[Title omitted.]

Order allowing appeal

Filed Feb. 5, 1945

Defense Plant Corporation, Appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the Commonwealth of Pennsylvania on the 31st day of October 1944, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the Statutes and the Rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be and the same hereby allowed to the Supreme Court of the United States fr the Supreme Court of the Commonwealth of Pennsylvania the above entitled cause, as provided by law, and that the Cl of the Supreme Court of the Commonwealth of Pennsylva shall prepare and certify a transcript of the record, proceedi and judgment in this cause and transmit the same to the S preme Court of the United States, so that he shall have the sa in said Court within thirty days of this date.

It appearing that Appellant is a corporate agency of t United States, its stock being wholly owned, directly
178 indirectly, by the United States, no bond or other securi for the prosecution of such appeal or to answer in da ages or costs shall be required of Appellant.

GEORGE W. MAXEY,
Chief Justice of the
Supreme Court of Pennsylvania.

Dated Feb. 2, 1945.

[File endorsement omitted.]

179 In the Supreme Court of Pennsylvania,
Western District

[Title omitted.]

Stipulation designating parts of the record to be included the transcript on appeal to the Supreme Court of the Unit States

Filed Feb. 19, 1945

It is hereby stipulated and agreed between attorneys for De fense Plant Corporation and attorney for the County of Beave that the record on appeal to the Supreme Court of the Unite States in this cause shall consist of the entire proceedings befo the Supreme Court of Pennsylvania, including:

1. The entire record on appeal to the Supreme Court Pennsylvania from the Court of Common Pleas of Beaver County Pennsylvania, as printed and used in the argument in the Su preme Court of Pennsylvania in this case.

2. The assignments of error made by Defense Plant Corpo ration on appeal to the Supreme Court of Pennsylvania fro the Court of Appeals of Beaver County, Pennsylvania.

3. The docket entries of the Supreme Court of Pennsylvania

4. The opinion of the Supreme Court of Pennsylvania file herein on October 31, 1944;

5. The motion for reargument before the Supreme Court of Pennsylvania, filed November 9, 1944, and the order of Court denying the same, dated November 17, 1944.

6. The petition for allowance of appeal to the Supreme Court of the United States.

7. The jurisdictional statement filed by Defense Plant Corporation, including the copy of the opinion and judgment of the Supreme Court of Pennsylvania thereto appended.

8. Assignments of error on appeal to the Supreme Court of the United States.

180 9. The order of the Supreme Court of Pennsylvania allowing an appeal to the Supreme Court of the United States.

10. Appellee's statement opposing jurisdiction and motion to dismiss.

11. This stipulation.

DEFENSE PLANT CORPORATION,
By STERLING NEWELL,
HENRY J. CRAWFORD,
WILLIAM N. GATES,
SQUIRE, SANDERS AND DEMPSEY,
HAROLD F. REED,
REED & EWING.
COUNTY OF BEAVER,
By JOHN G. MARSHALL,
County Solicitor.

[File endorsement omitted.]

181 [Citation in usual form showing service on John G. Marshall filed Feb. 9, 1945, omitted in printing.]

182 [Clerk's certificate to foregoing transcript omitted in printing]

184 In the Supreme Court of the United States

Statement of points to be relied upon and designation of record

Filed Feb. 24, 1945

Pursuant to Rule 13, Paragraph 9, of this Court, the Appellant states that it intends to rely upon all of the points in its Assignment of Errors. The Appellant deems the entire record

on appeal as necessary for consideration of the points so to be relied upon.

DEFENSE PLANT CORPORATION,
By HAROLD F. REED,
Its Attorney.

STERLING NEWELL,
HENRY J. CRAWFORD,
WM. N. GATES,
SQUIRE, SANDERS & DEMPSEY,
HAROLD F. REED,
REED & EWING,
Of Counsel.

Service of the above Statement of Points and Designation of Record to be relied on accepted this 10th day of February 1945.

JOHN G. MARSHALL,
County Solicitor and Attorney for Appellee.

185 Supreme Court of the United States

Order noting probable jurisdiction

March 26, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 49432. Pennsylvania Supreme Court. Term No. 979. Defense Plant Corporation, Appellant *vs.* County of Beaver, Pennsylvania. Filed February 24, 1945. Term No. 979 O. T. 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1945